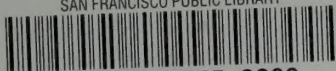


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APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

SENATOR ROBERT PRESLEY

ASSEMBLYMAN JERRY EAVES

BARBARA C. RIORDAN, Member  
State Air Resources Board

TIMOTHY P. HAIDINGER, Member  
Board of Governors  
California Community Colleges





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## P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: The meeting will come to order.  
Senator Bob Presley is here to introduce Barbara Riordan, Member  
of the State Air Resources Board.

SENATOR PRESLEY: Mr. Chairman, I'm real pleased to  
be here and to introduce to you Barbara Riordan, who is a  
candidate, or what do you call it, an applicant, for the Air  
Resources Board.

She's presently and has been for some time a member  
of the San Bernardino County Board of Supervisors. She has a  
very sensible, moderating approach to all issues. She's just  
been a very impressive person in that part of the world.

I think she would be an excellent member of the Air  
Resources Board. She's been there for a few months and has  
demonstrated that already.

I'd urge your approval.

CHAIRMAN ROBERTI: Thank you, Senator.

Assemblyman Eaves is here as well.

ASSEMBLYMAN EAVES: I would just like to associate  
myself with Senator Presley's remarks.

I've known Barbara Riordan for the last 15 years, and  
have served at various levels of government with her. I think  
she would do an outstanding job on the Air Resources Board.

I won't take any more of your time.

CHAIRMAN ROBERTI: Thank you, Assemblyman.

Supervisor, we will ask you what we ask all the





1 Governor's nominees, and that is why you feel you're qualified  
2 to assume this position?

3 MS. RIORDAN: Well, by virtue of the responsibility  
4 that I hold as a member of the Board of Supervisors for the  
5 County of San Bernardino, we are also the governing body for the  
6 Air Pollution Control District that governs San Bernardino  
7 County; the Air Pollution Control District that basically covers  
8 our vast desert.

9 Part of our county, as you well know, is in the South  
10 Coast area; part of it is in its own area. And so, as you  
11 recall, our category that I'm asked to fill is one to represent  
12 all other air pollution control districts other than the three  
13 that are mentioned in law that serve on the Air Resources Board.

14 We have, since 1983, since I've been on the Board,  
15 been responsible for the activities of that Air Pollution  
16 Control District, and just currently find the air quality  
17 element that will become part of our general plan there in the  
18 County of San Bernardino, which is an important step forward at  
19 the local government level in accepting and addressing the  
20 responsibility of improving air quality.

21 So, for those two reasons, I believe I am qualified  
22 to represent those other air pollution control districts other  
23 than the major three that are mentioned.

24 CHAIRMAN ROBERTI: Thank you, Supervisor.

25 Are there any questions of the nominee?

26 SENATOR MELLO: I'm a former county supervisor  
27 myself.  
28





1 MS. RIORDAN: He has empathy for me.

2 CHAIRMAN ROBERTI: Right now, as you know, we're  
3 having a very difficult time trying to balance environmental,  
4 especially air quality, regulations against the need to  
5 encourage people to stay in business.

6 I'd like to know what your overall philosophical  
7 approach is to the dilemma we all face.

8 MS. RIORDAN: It is a difficult balance.

9 Let me just share with you, while I've only been  
10 there at the Air Resources Board for a short few months, it is  
11 apparent to me that the staff is very sensitive to the balance  
12 that we have to maintain with not only the concerns for air  
13 quality, for the concerns for the economy, and particularly  
14 those people who are in small business.

15 I just had shared with Senator Presley that I felt  
16 the staff at the Air Resources Board was very user friendly.  
17 And in some of those decisions that I have been a part of in the  
18 last few months, much has gone on prior to those hearings  
19 working with industry so that we could, in some way, moderate,  
20 perhaps, what would be a very onerous rule that would require,  
21 perhaps, more of an industry than they are able to bear.

22 I think there has been, and I have certainly been a  
23 party to, discussions from the industry that have shared with me  
24 their feelings about the Air Resources Board staff and how very  
25 helpful they have been.

26 So, I think that as we've gone through the hearings,  
27 we've tried to, in some cases, give some additional time to meet  
28





1 the regulations that we have been working with; in some cases,  
2 simply modify them to make them more acceptable to today's  
3 economy. At the same time, not forgetting what our goal is, as  
4 stated by the California Clean Air Act, that we do have to  
5 simply work on improving the air quality for the State of  
6 California.

7 CHAIRMAN ROBERTI: Very good. That's encouraging.

8 Any other questions? Is there any opposition in the  
9 audience? Any other support in the audience?

10 Then do I hear a motion?

11 SENATOR BEVERLY: Move approval.

12 CHAIRMAN ROBERTI: Senator Beverly moves the  
13 confirmation be recommended to the Floor.

14 Secretary will call the roll.

15 SECRETARY LAMBROS: Senator Beverly.

16 SENATOR BEVERLY: Aye.

17 SECRETARY LAMBROS: Senator Mello.

18 SENATOR MELLO: Aye.

19 SECRETARY LAMBROS: Senator Petris. Senator Craven.  
20 Senator Roberti.

21 CHAIRMAN ROBERTI: Aye.

22 The vote is three to nothing; confirmation is  
23 recommended to the Floor.

24 Congratulations.

25 MS. RIORDAN: Thank you very much.

26 SENATOR BEVERLY: Mr. Chairman, Senator Watson should  
27 note that the majority of the Board are women.  
28





1 CHAIRMAN ROBERTI: Right, four of the five. Times  
2 are changing.

3 The next appointment is Mr. Timothy Haidinger, Member  
4 of the Board of Governors of the California Community Colleges.

5 We'll ask you the same question, that is why you feel  
6 you're qualified to assume this position?

7 MR. HAIDINGER: Well, I've been on the Community  
8 College Board of Governors, Senator, for the last five years,  
9 and I served the last two years as President of the Board.

10 I have worked full-time as a college instructor for  
11 two years, and I ran an educational arm for one of the large  
12 public accounting firms, so I think I have a good acquaintance  
13 with education, and particularly with community colleges.

14 CHAIRMAN ROBERTI: Are there any questions?

15 SENATOR MELLO: Mr. Chairman.

16 CHAIRMAN ROBERTI: Senator Mello.

17 SENATOR MELLO: I have five community colleges I meet  
18 frequently with. What I see happening in the state is something  
19 that is a predicament for higher education. We're turning away  
20 a lot of students at the University of California level. The  
21 same thing is happening at the State Universities.

22 And then our community colleges, which have a cap on  
23 enrollment, I have one of them that's got a thousand students  
24 above their cap, and they're funding them out of existing funds,  
25 but maintenance is going by the wayside. I just don't know.

26 Do you talk to the Governor personally, or have you  
27 had a chance -- my question really is not so much whether you  
28



1 talk to him, but what's going to happen if we don't provide for  
2 access to college, our higher education system right now?

3 I guess there is a cap right now in community  
4 colleges. They're not starting a new class when there are  
5 students available for it. They don't have the money for it.

6 MR. HAIDINGER: I think, Senator, that's the hottest  
7 subject, if you will, in community college circles right now.

8 Community colleges, I think, are the victim of our  
9 own success. We have done a very, very good job of selling the  
10 value of a community college education. We've done a very good  
11 job of identifying the kind of courses that students want and  
12 need. As a result, we're overloaded with students. That's not  
13 always been the case in community colleges.

14 I don't have an answer to what we're going to be able  
15 to do in the future. We do have a cap, and indeed, many of the  
16 colleges are operating over that cap. They're doing that  
17 largely by increasing class size. They can't continue to do  
18 that.

19 I think what we are in fact doing is limiting access.  
20 We are not now accepting everybody who can benefit from a  
21 community college education. That's happening just on a de  
22 facto basis, campus by campus, because the classes are not  
23 available for students who'd like to have them.

24 If we don't get significant additional funding for  
25 community colleges, that is going to continue to happen, and I  
26 think we may indeed have to find a way of setting priorities for  
27 what kind of courses we offer. I don't know how those would get  
28





1 set. I think it will be a very difficult process if we have to  
2 go through it.

3 I'm delighted that community colleges were treated  
4 rather favorably compared to other state agencies in the last  
5 year's budget. I'm hopeful that the Governor, I believe, will  
6 be recommending that community colleges receive comparatively  
7 good treatment, and I hope that will continue.

8 But I certainly don't have an answer.

9 SENATOR MELLO: I'm impressed with your background.  
10 You're a Certified Public Accountant from Stanford, and a B.S.  
11 from Notre Dame.

12 The question is, in your own personal opinion, what's  
13 the answer? Do we just put a cap on enrollment? Try to raise  
14 revenues from student fees? They're even charging high parking  
15 fees right now for students attending. They charge them for  
16 just about everything, even physical examinations.

17 Do the students still have a right to education?

18 MR. HAIDINGER: I don't think parking fees are going  
19 to do it.

20 I think that while student fees make some  
21 contribution, I don't really expect student fees will, with the  
22 present climate in the state among all voters, I don't think  
23 there's very much sentiment for a substantial increase in  
24 student fees, not enough to provide access to everyone who wants  
25 it.

26 My personal sense, and certainly it does not reflect  
27 at this point the view of the Chancellor or the Board in any way  
28





1 that we have taken any position, but my personal sense is that  
2 we're going to have to take a very hard look at the courses  
3 we're offering; be sure we're only offering courses that provide  
4 significant benefit to the students. We may have to say which  
5 courses provide the most benefits and eliminate some that are  
6 not high on that list. I think that's coming.

7           SENATOR MELLO: Do you see a relationship between the  
8 current recession that we're in and a higher attendance  
9 enrollment in our universities?

10           MR. HAIDINGER: Yeah, I think that's true of  
11 education across the board. I think it's particularly true of  
12 graduate school education.

13           I think people who have a difficult time finding jobs  
14 feel it's appropriate to go back to college and get a little  
15 more training. When the economy picks up, they'll be even  
16 better trained than they are now.

17           I have a daughter who just graduated from UCLA. I  
18 see a lot of her friends taking advantage of that route.  
19 Certainly I think that's the case.

20           SENATOR MELLO: Because of the recession, we should  
21 making more of an effort to open up access, provide more  
22 opportunity for those who are looking to upgrade their education  
23 skills rather than follow what's happening now, in that we're  
24 precluding them from having access.

25           MR. HAIDINGER: It's a wonderful time to be doing it,  
26 because many of the students whom we might get, might not  
27 otherwise be productively employed. So this is a very good time  
28



1 in their lives to take advantage of education.

2 SENATOR MELLO: Thank you.

3 CHAIRMAN ROBERTI: Any other questions of  
4 Mr. Haidinger? Is there anyone here in support? In opposition?

5 Then do I hear a motion?

6 SENATOR BEVERLY: Move approval of the nomination.

7 CHAIRMAN ROBERTI: Senator Beverly moves that the  
8 nomination of Mr. Haidinger to the Board of Governors of the  
9 California Community Colleges be recommended to the Floor.

10 Secretary will call the roll.

11 SECRETARY LAMBROS: Senator Beverly.

12 SENATOR BEVERLY: Aye.

13 SECRETARY LAMBROS: Senator Mello.

14 SENATOR MELLO: Aye.

15 SECRETARY LAMBROS: Senator Petris. Senator Craven.  
16 Senator Roberti.

17 CHAIRMAN ROBERTI: Aye.

18 The vote is three to zero; the nomination is  
19 recommended to the Floor.

20 Congratulations and thank you.

21 [Thereupon this portion of the  
22 Senate Rules Committee hearing  
23 was terminated at approximately  
24 2:02 P.M.]

25 --oo0oo--  
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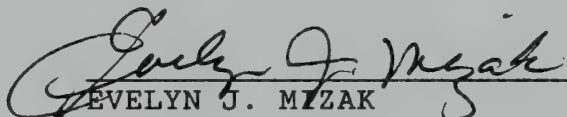
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IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of January, 1992.

  
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SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

EDWARD G. HEIDIG, Director  
Conservation

KENNETH F. KEVORKIAN, Member  
California Transportation Commission

SENATOR QUENTIN KOPP, Chair  
Senate Transportation Committee

ROBERT B. MURPHY, Member  
Youthful Offender Parole Board

SENATOR PATRICK JOHNSON

NORMAN D. SHUMWAY, Member  
Public Utilities Commission

CARL JONES, Legislative Director  
Congress of California Seniors

DEBORAH WILDER, Executive Director  
Women Construction Owners & Executives

SHERRIE GOLDEN, Chief Legislative Advocate  
California State Employees' Association





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## P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: Regarding the appointment of Mr. Fessler, that has been put over until next Wednesday.

The next appointment we have on the agenda is the appointment of Edward G. Heidig, Director of Conservation.

MR. HEIDIG: Good afternoon, Mr. Chairman, Members.

CHAIRMAN ROBERTI: We will ask you what we ask all the Governor's appointees, and that's why you feel you're qualified to assume this position?

MR. HEIDIG: Mr. Chairman and Members, it's an honor to be appointed by Governor Wilson to serve the people of California as the Director of the Department of Conservation.

I have an extensive background in land use issues, starting as a land use attorney working for the Santa Monica Mountains Conservancy as the Chief Administrative Officer and Counsel for the Mountains Recreation Authority. In that position, I was very much concerned with the retention of open space, and as the Department of Conservation is concerned with farmland protection, I think that that makes a good fit.

In addition to that, working for then Senator Pete Wilson in Washington, working on the Desert Protection Act, I became aware and involved with the myriad of interests in the California desert with resource protection of minerals and open space. And again, I think that being in charge of the Division of Mines and Geology that there's a good fit there.

Ten years of work at the local level with a number of





1 different advisory committees and commissions, and being a  
2 representative on the Air Pollution Control District for Ventura  
3 County, my home county, I became aware and involved with the  
4 regulation of the oil and gas industry. And again, the  
5 Department of Conservation has its mission to regulate the oil  
6 and gas division.

7 So, for these reasons, and the fact that in working  
8 for Senator Wilson, then Senator Wilson, I had an open door  
9 policy to all interest groups: to the special interests, to the  
10 environmental community.

11 I would like to do a good job and would appreciate  
12 your consideration.

13 CHAIRMAN ROBERTI: Thank you, Mr. Heidig.

14 Are there any questions? Senator Petris.

15 SENATOR PETRIS: I'm sorry we didn't get a chat this  
16 morning.

17 I have some areas I'd like to touch on. I see in the  
18 list of areas under your jurisdiction, wetlands are not  
19 included.

20 MR. HEIDIG: That is correct.

21 SENATOR PETRIS: Who covers that?

22 MR. HEIDIG: Well, it's -- it has many different  
23 jurisdictions. I think partly Fish and Game, the Water Control  
24 Board, and the Department of Water Resources.

25 SENATOR PETRIS: It's probably just as well you don't  
26 have it. You've got enough here.

27 MR. HEIDIG: Yes, sir.  
28



1           SENATOR PETRIS: But I wondered, since you're newly  
2 arrived from Washington, if the conservation President, who's  
3 trying to wipe out our wetlands, has had an impact on your  
4 outlook?

5           MR. HEIDIG: I would just say parenthetically, the  
6 Department of Conservation is concerned with the protection of  
7 prime ag. land. We have not had a net decline in cultivation in  
8 California, but we have had a transfer of the land that's  
9 cultivated from prime ag. land to more marginal ag. land. As  
10 more marginal ag. land is developed, it uses more water; it  
11 causes more erosion. So it is important in that tangential role  
12 that we protect water and conserve water indirectly.

13          SENATOR PETRIS: I understand on prime ag. land that  
14 the Williamson Act isn't working so well anymore. It's been on  
15 the books a long time.

16          One of the advantages of having an institutional  
17 memory is to be able to reach back. The Williamson Act was  
18 originally a bill that I carried, but then it was separated out,  
19 and I supported it very strongly.

20          But I understand that in spite of the provisions and  
21 the reimbursement to counties for loss of property taxes,  
22 there's been a very substantial shift in the last few years,  
23 which is working to the detriment of the purpose of the Act.

24          Have you had an opportunity to review that?

25          MR. HEIDIG: Yes, I have.

26          I think there's a number of factors of the Williamson  
27 Act that are still very helpful.  
28





1 First, I don't think that the Wilson -- that the  
2 Williamson Act was ever intended to be the complete farmland  
3 protection program. It was designed to be the state's role in  
4 partnership with local government. In a county like Yolo, which  
5 is very concerned about farmland protection, it's enacted right  
6 to farm ordinances; it works very well.

7 It is also a flow constructor, if I can borrow from  
8 water conservation terminology, and not a bucket. It doesn't  
9 capture so that you can see it, but it reduces the leapfrog  
10 development that often happens.

11 And thirdly, I think that the Supreme Court review of  
12 the Proposition 13 case may make its effectiveness -- provided  
13 that that case goes a certain way, may make its effectiveness  
14 very important, indeed.

15 SENATOR PETRIS: What is the issue in that case?

16 MR. HEIDIG: The Supreme Court has agreed to review  
17 equal taxation provisions of --

18 SENATOR PETRIS: Oh, that one.

19 MR. HEIDIG: Yes.

20 SENATOR PETRIS: You think that will have an impact?

21 MR. HEIDIG: If the Court were -- I'm not a  
22 constitutional lawyer, but if the Court were to decide that  
23 Proposition 13 was -- did not provide equal taxation, that would  
24 have a large effect on the effectiveness of the Williamson Act.

25 SENATOR PETRIS: Which direction?

26 MR. HEIDIG: I think it would provide a tax -- a tax  
27 advantage to those people who are under Williamson contracts,  
28



1 and therefore, would encourage the protection of farmland.

2 SENATOR PETRIS: Is there anything in the meantime  
3 that you feel the state ought to be doing to further promote the  
4 policy of the Williamson Act?

5 MR. HEIDIG: First, I think we -- with Secretary  
6 Wheeler's help, the Department of Conservation was very active  
7 in the protection of the Williamson Act as part of last year's  
8 budget. It is in this year's Governor's budget.

9 Secondly, I think there's a number of things we could  
10 do, and we're reviewing to assemble a legislative package  
11 relative to improvements in the Williamson Act.

12 And I think that I have started this year to reach  
13 out to farmers, resource conservation districts, and the  
14 environmental community to see what sort of role we can play to  
15 build more farmland protection as a supplement to the Williamson  
16 Act.

17 SENATOR PETRIS: Do you have any information on the  
18 number of acres that have been taken out of farming due to the  
19 urban pressures, development pressures, in which the Williamson  
20 Act farmers have given up and sold?

21 How much land have we lost from the protection in the  
22 last decade?

23 MR. HEIDIG: Well, we lose between 50,000 and 100,000  
24 acres per year.

25 SENATOR PETRIS: What grade is that? Is that mostly  
26 prime?

27 MR. HEIDIG: Yes, prime ag. land.  
28



1           Generally, we're in a steady state of acres in  
2 cultivation, but that acreage is shifting towards more marginal  
3 ag. land.

4           SENATOR PETRIS: We should figure out a way.  
5 Development ought to be on less productive farmland.

6           MR. HEIDIG: Yes, I think that's right; although,  
7 there's some unproductive -- there's some marginal farmland that  
8 might have important scenic values: grazing lands that are of a  
9 scenic nature that should be protected.

10           I can say one thing that I'm very much involved in is  
11 the geographic information systems. If we can fight a war in  
12 the Persian Gulf which utilizes smart weaponry, we ought to do a  
13 better job processing environmental protection using  
14 sophisticated environmental information.

15           It seems, as we've looked at geo-based information  
16 systems in the Department of Conservation, we protect land from  
17 landslides, but we also pay land to be preserved in the  
18 Williamson Act. As we look at the overlays of both of those  
19 informations, frequently we find the same acreage that we paid  
20 to keep out of development in farmland protection is also  
21 subject to landslides.

22           It seems like we could get more bang for our buck by  
23 putting that information together.

24           SENATOR PETRIS: Who should be doing that?

25           MR. HEIDIG: I think the Department of Conservation  
26 has both divisions, but there may a number of interfaces within  
27 the Resources Agency which have wetlands and other kinds of  
28





1 information that it makes sense --

2 SENATOR PETRIS: What does it take to point us in  
3 that direction? Can you do that administratively, or do you  
4 need legislation? Do you need further authorization?

5 MR. HEIDIG: Well --

6 SENATOR PETRIS: More money?

7 MR. HEIDIG: Money is part of it, to make sure that  
8 this information is digitized and put into computer systems and  
9 software.

10 Many different departments in the Resources Agency  
11 are already on its way, FRAP and the Department of Forestry are  
12 doing -- is doing that kind of data collection. But we need to  
13 increasingly talk among ourselves.

14 SENATOR PETRIS: In the budget provisions you  
15 mentioned earlier, is there enough to take care of that for this  
16 year or not?

17 MR. HEIDIG: Uh --

18 SENATOR PETRIS: You said something about budgeting  
19 earlier.

20 MR. HEIDIG: We're trying -- we --

21 SENATOR PETRIS: It's all right. You can say there's  
22 not enough.

23 [Laughter.]

24 MR. HEIDIG: Not enough.

25 I support the Governor's budget.

26 [Laughter.]

27 SENATOR PETRIS: But you wish he'd had more money,  
28



1 right? Okay, so do we all.

2 MR. HEIDIG: I just would like the record to show  
3 that I was noncommittal.

4 [Laughter.]

5 CHAIRMAN ROBERTI: You're a very quick learner in  
6 this business; aren't you?

7 MR. HEIDIG: Thank you, Mr. Chairman.

8 SENATOR PETRIS: Another area I'm interested in is  
9 the recycling of beverage containers. We did so well, we ran  
10 out of money, as I understand it. I don't know where we are  
11 right now. I guess we're still out of money.

12 MR. HEIDIG: We have \$13 million in a -- in surplus  
13 right now that is projected to carry us through, we hope not  
14 limiting, to March, when the urgency legislation which was  
15 enacted by both Houses last year and signed by the Governor  
16 equalizes payments.

17 SENATOR PETRIS: Through the new processing fee?

18 MR. HEIDIG: This is called the California Redemption  
19 Value, and the manufacturers and distributors pay this money.  
20 Actually, distributors pay this money to the Department of  
21 Conservation, then it's refunded through a variety of ways: to  
22 curbside collections, to individuals who turn in their beverage  
23 containers. It will be two-and-a-half cents in and two-and-a-  
24 half cents out.

25 Before, we were giving a hidden subsidy to people who  
26 recycled. We took two cents in, but we paid two-and-a-half  
27 cents out. Now we will equalize it, and that should give us a  
28





1 cushion.

2 But you're quite right. We've achieved an 84 percent  
3 recycling rate, and that recycling rate, as you get up into  
4 those 80 percent figures, even going up to 87 or 89 percent may  
5 create a problem even with in and out equalized payments.

6 SENATOR PETRIS: How's that going to impact on trying  
7 to expand? We talked about cans, then bottles under the Bottle  
8 Bill. Can we even think about going to plastics and other  
9 things that aren't covered at the present time?

10 MR. HEIDIG: We include some plastic containers now.

11 SENATOR PETRIS: Some of the soft drink containers?

12 MR. HEIDIG: Yes, the two-liter bottles and some  
13 12-ounce plastic bottles.

14 SENATOR PETRIS: What do we pay for those? The same  
15 amount?

16 MR. HEIDIG: I believe it's 10 cents redemption value  
17 for the two-liter, and two for a nickel for the smaller ones.

18 I think there's -- I believe that -- well, when we  
19 started -- what I started last spring, winter, as the Director,  
20 I found that there was a mountain of glass in California that we  
21 do not have -- we did not have a steady state on secondary  
22 markets for recycled goods. We've eliminated that mountain of  
23 glass, and some would say, "Well, find, put more containers --"

24 SENATOR PETRIS: Where did you put it?

25 MR. HEIDIG: Put it back in the furnaces, and we paid  
26 -- we paid a number of dollars out to encourage market  
27 development.  
28



1           However, I don't think that we have yet achieved a  
2 steady state with those goods, plastic and glass, for example,  
3 which are as -- which are not as -- do not have as much  
4 secondary value as aluminum does. Until we do that, it's going  
5 to be difficult to add more and more containers.

6           There are a variety of views from the industry.  
7 Some industry officials, like Coors and others who are in the  
8 program, indirectly pay for curbside collection, because the  
9 California Redemption Value goes back to those curbsides to pay  
10 for that. And that's basically funded by the distributors that  
11 pay into the system. They say, "Hey, we're not pickle jars and  
12 others are getting a free ride based on the collection program."

13           Also, we have the enacted law that will require by  
14 1995, 25 percent; by the year 2000, 50 percent reduction on  
15 waste in California. That's right around the corner, and we  
16 certainly want to reduce the waste.

17           SENATOR PETRIS: Are we on track to accomplish that?

18           MR. HEIDIG: I have a degree in Jurisprudence, and  
19 I'm earning one in Jurisdiction.

20           The Integrated Waste Management Board has, you know,  
21 primary jurisdiction in that issue relative to reducing the  
22 waste stream.

23           I think it's important for the beverage container  
24 program, under the Division of Recycling, Department of  
25 Conservation, to do, you know, its share, but we have to work  
26 out this problem on the secondary markets. I don't think we're  
27 there yet.  
28



1           SENATOR PETRIS: Going back to the first subject,  
2 what form is the improvement in communication between the  
3 various agencies taking under Natural Resources? Have they  
4 established regular meetings to coordinate things?

5           MR. HEIDIG: Yes, we have regular director meetings.

6           SENATOR PETRIS: How many departments are involved?

7           MR. HEIDIG: All the major departments: Department  
8 of Conservation, Boating and Waterways, Parks and Recreation,  
9 Forestry, Fire Protection, Water Resources.

10          SENATOR PETRIS: Energy Commission?

11          MR. HEIDIG: The Energy Commission as well.

12          SENATOR PETRIS: Thank you.

13          MR. HEIDIG: You're welcome. Thank you.

14          CHAIRMAN ROBERTI: Thank you, Senator.

15          Are there any other questions?

16          Is there any opposition in the audience? Then do I  
17 hear a motion?

18          SENATOR CRAVEN: Move.

19          CHAIRMAN ROBERTI: Senator Craven moves that the  
20 confirmation of Edward G. Heidig, Director of Conservation, be  
21 recommended to the Floor.

22          Secretary will call the roll.

23          SECRETARY WEBB: Senator Beverly.

24          SENATOR BEVERLY: Aye.

25          SECRETARY WEBB: Senator Mello.

26          SENATOR MELLO: Aye.

27          SECRETARY WEBB: Senator Petris.





1 SENATOR PETRIS: Aye.

2 SECRETARY WEBB: Senator Craven.

3 SENATOR CRAVEN: Aye.

4 SECRETARY WEBB: Senator Roberti.

5 CHAIRMAN ROBERTI: Aye.

6 The vote is five to zero; confirmation is recommended  
7 to the Floor.

8 MR. HEIDIG: Thank you, Senators.

9 CHAIRMAN ROBERTI: The next appointment is Mr.  
10 Kenneth F. Kevorkian, Member of the California Transportation  
11 Commission.

12 MR. KEVORKIAN: Mr. Chairman, Senators.

13 CHAIRMAN ROBERTI: We will ask you the same question,  
14 why you feel you're qualified to assume this position?

15 MR. KEVORKIAN: This is my second appointment. I was  
16 initially appointed by Governor Deukmejian a little over four  
17 years ago. I am now one of the senior members of the  
18 Commission, and this year I have been elected Chairman.

19 I have now had five years' experience and have tried  
20 to take a leadership role in a number of areas. One is rail,  
21 which I've been trying to promote in the last three, four years.  
22 Another area that I feel very proud of that I tried -- not tried  
23 to, I think I have -- we have an almost monthly meeting, a  
24 liaison meeting, between the various departments: Air  
25 Resources, Energy, Transportation. The EPA is now involved and  
26 also the Federal Highway Administration. So, we are trying to  
27 promote coordination and efficiency between the various agencies  
28



1 where there's overlapping of interests.

2 Other than that, I've tried to be very active and  
3 tried to familiarize myself with responsibilities that I have.

4 CHAIRMAN ROBERTI: Thank you very much.

5 Are there any questions of Mr. Kevorkian?

6 I see, Mr. Kevorkian, we live three blocks away from  
7 each other.

8 MR. KEVORKIAN: Yes, I go by your house. I don't  
9 know if you know where I live. It's just right between  
10 Nottingham and Childhurst.

11 CHAIRMAN ROBERTI: The real house.

12 [Laughter.]

13 MR. KEVORKIAN: I noticed your Christmas lights also  
14 this year.

15 CHAIRMAN ROBERTI: Senator Petris.

16 SENATOR PETRIS: I went to school with some  
17 Kevorkians. That was a long time ago.

18 MR. KEVORKIAN: Probably family.

19 SENATOR PETRIS: I live in the Bay Area, Oakland.  
20 I'm happy to see we haven't run out of Armenians in  
21 government.

22 MR. KEVORKIAN: I appreciate being here.

23 SENATOR PETRIS: I'm concerned about a balanced  
24 transportation, which is a very big challenge here in  
25 California.

26 MR. KEVORKIAN: Yes.

27 SENATOR PETRIS: We have been so successful, more and  
28





1 more people have come in. Those are now complaining about too  
2 many people being here, the freeways being congested, and so on  
3 and so forth.

4 I've always been interested in expanding our public  
5 transportation, or providing the proper incentives to individual  
6 motorists to get them out of their automobiles and try some  
7 other form.

8 Is there anything cooking right now in the  
9 Commission to promote that and offer incentives to local transit  
10 districts to accomplish that?

11 MR. KEVORKIAN: Well, actually, to offer to local  
12 transit districts, no. But the state has policies in effect  
13 that's encouraging vanpooling, carpooling; incentives not to  
14 drive, to take public transportation; monetary incentives that  
15 various corporations are offering to their employees to take  
16 public transportation so they don't have to drive and park.

17 But to specific transit agencies, no. All I can tell  
18 you that we've been doing is, in the last three, four years, and  
19 I've tried to be very involved with that, is improving our  
20 transit and rail systems throughout the state.

21 SENATOR PETRIS: What is the form of the monetary  
22 incentive? Is it a tax benefit to the employer?

23 MR. KEVORKIAN: There are some. A lot of employers  
24 are just, rather than subsidized parking for employees -- I have  
25 one friend who works for a bank in downtown Los Angeles. In  
26 fact, she's the wife of our minister. And they are paying her  
27 \$37 a month if she will find some alternative to driving her own  
28



1 vehicle. That way, they don't have to pay for parking, and it  
2 partly contributes to easing the congestion and pollution  
3 problems.

4 SENATOR PETRIS: Is that part of the Commission  
5 program, or is that one enlightened company?

6 MR. KEVORKIAN: That has been a state program. The  
7 Commission itself has not advocated that or established  
8 procedures for that. Those have all been legislative procedures  
9 that have been established.

10 SENATOR PETRIS: Has there been any noticeable  
11 increase in the use of that program in the last few years?

12 MR. KEVORKIAN: From everybody that I have talked to,  
13 yes. By state statutes, there are requirements for  
14 corporations, depending on the size and the number of employees,  
15 to implement this program or to show cause why they are not.  
16 And there are penalties for this also, monetary penalties, if  
17 they don't adhere.

18 SENATOR PETRIS: Does that include the use of grants  
19 by the company?

20 MR. KEVORKIAN: They have vanpooling and carpooling.  
21 Both of those are to be encouraged. A lot of companies have  
22 their own vans. They establish routes and, you know, sign up  
23 for ridership, and then they are also encouraging the carpool.

24 SENATOR PETRIS: I carried legislation requiring that  
25 a hundred years ago.

26 MR. KEVORKIAN: Yes.

27 SENATOR PETRIS: I remember that several major  
28



1 companies in the Los Angeles area were way ahead of the rest.

2 MR. KEVORKIAN: Yes.

3 SENATOR PETRIS: I couldn't sell it up north, as a  
4 matter of fact, but they had already done this. They provided  
5 pools; they provided other incentives; they provided vans.

6 Lockheed, I think, was one of them. And I don't know  
7 to what extent they might have kept it up.

8 MR. KEVORKIAN: There's even a group in Los Angeles  
9 called Computer Commute, and they have a system that they're  
10 trying to, you know --

11 SENATOR PETRIS: Direct through their computer to the  
12 right pool.

13 MR. KEVORKIAN: That's correct.

14 SENATOR PETRIS: Now, what specifically do you have  
15 in mind for improving the overall transportation system?

16 MR. KEVORKIAN: Well, because of our air quality  
17 requirements that we must attain by the year 2010, and the fact  
18 that we're not going to do it by continually putting more cars  
19 on the road with fossil burning fuel, my long vision in this has  
20 been that we have to improve our public transportation system.

21 And something that I advocated during the time that  
22 the Governor was establishing the blueprint transportation  
23 legislation a few years back, I was advocating at that time a  
24 way of forming within the State of California, which I would  
25 equate to our federal interstate program, where the state took a  
26 leadership role in establishing routes, mandating requirements,  
27 coordinating between regions and communities so we have an  
28





1 infrastructure where you wouldn't take one type of vehicle in  
2 one county and have to change to another go get to somewhere  
3 else.

4 I would like to see the state take a more active role  
5 in establishing these corridors and mandating routes and  
6 requirements throughout the state, because I think that's the  
7 only way you can effectively do it. If we just fragment that,  
8 and each local and each region does -- goes on its own way, I  
9 don't think we can do it properly and efficiently.

10 SENATOR PETRIS: Would the Commission make a  
11 recommendation to the Legislature to that effect?

12 MR. KEVORKIAN: Well, I initially recommended this  
13 three years ago. We are now getting more extensively into the  
14 rail programs.

15 For example, in Southern California, 80 percent of  
16 our funding, state funding, is for transit and rail-related  
17 projects. So, more and more, our Transportation Commission is  
18 coming out of the old highway mode, which we were so  
19 characterized as being, and more and more trying to get involved  
20 in rail transit. I'm very concerned that we do grow in that  
21 area.

22 SENATOR PETRIS: But you don't have any tools to  
23 encourage local transit districts to do that; do you?

24 MR. KEVORKIAN: No, we don't, sir. That would all be  
25 legislatively, yes, sir.

26 SENATOR PETRIS: Are those communities that have  
27 created rail transportation been pretty successful?  
28



1 MR. KEVORKIAN: Yes. You know, we had a lot of local  
2 sales tax measures that were passed to encourage it and share in  
3 the expenses. And we've got a lot of areas that have done it  
4 very well.

5 For example, the area in San Diego, one of the  
6 founding members for the MTDB is here on our Commission now.  
7 They have established in San Diego probably the most efficient  
8 inner-city rail program, transit program, in the United States.  
9 They're the only ones that are making a return on the fare box.  
10 They're breaking even. It's highly successful.

11 I think when it's done in a proper, coordinated,  
12 efficient manner, it's the way to go. And the public's going to  
13 get more and more in the mode of using it, and we have to make  
14 it user-friendly.

15 This is why I'm very concerned that we coordinate  
16 what we're doing, so someone's not going to say, "Well, in order  
17 to get to the airport, I've got to take Line A, and then I've  
18 got to transfer to B, and then take a people mover C into the  
19 airport." I don't want to see that happen.

20 I want to be able to be in a situation like foreign  
21 countries are in. You can get, in any major, metropolitan city  
22 in Europe or Japan, and get out of your hotel within minutes on  
23 a rail system that will take you directly to the airport. I  
24 would love to see us in that posture.

25 SENATOR PETRIS: Maybe I can try a plan on you that  
26 you can have the staff dissect.

27 MR. KEVORKIAN: Surely.  
28





1           SENATOR PETRIS: I prefer the rails. I agree; I  
2 think that's the way to go.

3           But as an interim measure, one time I had a bill that  
4 drew a circle around every city that had a population of 250,000  
5 or more. No automobiles were permitted inside that circle other  
6 than delivery trucks and emergency equipment. They part their  
7 car at the perimeter and get into a golfcart-type vehicle  
8 activated by a credit card. So, you have an electric cart that  
9 takes you in the rest of the way. Park it, and then when you  
10 get ready to go home, you just pick up another one, go back.

11           It didn't pass.

12                           [Laughter.]

13           MR. KEVORKIAN: I won't comment on that.

14           SENATOR PETRIS: I'm ready to take another look at  
15 it. If I can get some authoritative friendly response, I'll put  
16 the bill in again.

17           MR. KEVORKIAN: Well, I can tell you, in your major  
18 metropolitan cities throughout the world where there are  
19 effective transit systems, no one wants to drive their car into  
20 the inner city. They will utilize public transportation.

21           SENATOR PETRIS: But until we get there, you know --

22           MR. KEVORKIAN: We've got a problem.

23           SENATOR PETRIS: It's going to take a while.

24           Well, maybe we'll talk about it some other time.

25           MR. KEVORKIAN: Surely.

26           SENATOR PETRIS: I think it's time to dust that one  
27 off.  
28



1 Thank you.

2 MR. KEVORKIAN: You're welcome.

3 CHAIRMAN ROBERTI: Thank you, Senator.

4 In the part, Mr. Kevorkian, as regards some of your  
5 colleagues and former colleagues on the Transportation  
6 Commission, there have been conflicts of interest questions.

7 MR. KEVORKIAN: Yes.

8 CHAIRMAN ROBERTI: I guess part of it is just due to  
9 the nature of the Commission, and the kinds of people who are  
10 appointed because of the various expertise to get on the  
11 Commission.

12 What is the Commission doing, or has it done  
13 anything, in order to set up any kind of guidelines when these  
14 conflicts come up so we can avoid a Hawthorne case?

15 MR. KEVORKIAN: Yes. I would agree with you that  
16 previously, there were some conflicts.

17 I think the Governor has done a very good job in the  
18 recent appointees this last year. There are four new appointees  
19 who all have various backgrounds in transportation. And from  
20 what I know of them personally, I do not see any personal  
21 conflict in anything they're doing in relationship to the  
22 Commission.

23 CHAIRMAN ROBERTI: So, the Commission itself isn't  
24 setting up any special guidelines?

25 MR. KEVORKIAN: No, we haven't.

26 Once again, the appointments are by the Governor, and  
27 we have never been asked for recommendations as to the  
28



1 individual or what criteria they should have as a background.

2 CHAIRMAN ROBERTI: I raise the point of relevance,  
3 not because of you personally, not because of the Commission,  
4 but because of the Hawthorne thing. It was a bit embarrassing  
5 to everybody, including the Rules Committee.

6 MR. KEVORKIAN: Yes.

7 CHAIRMAN ROBERTI: Where Mr. Hawthorne had assured us  
8 that there was no conflict, over and over. And it seemed like  
9 he had been voting, if I'm not mistaken, even after he testified  
10 before us, he continued to vote.

11 Was that the case?

12 MS. MICHEL: Yes, absolutely.

13 CHAIRMAN ROBERTI: So, that isn't your personal  
14 ethical problem, but it's a real concern.

15 MR. KEVORKIAN: Yes, I think all of us Commissioners  
16 are quite aware of what happened to Mr. Hawthorne. The  
17 financial penalty that was assessed to him also.

18 I believe that from that example, all of us will be  
19 very cognizant of how we vote.

20 But as I said, I do not see an area in any one of the  
21 Commissioners that are now on the Commission where this would  
22 even have a bearing. But we all are aware of this Hawthorne  
23 situation.

24 CHAIRMAN ROBERTI: Are there any other questions?

25 We've been joined by the Chairman of the Senate  
26 Transportation Committee, Senator Quentin Kopp, a San Francisco  
27 Senator.  
28





1           SENATOR KOPP: Thank you, Mr. Chairman and Members.

2           Mr. Kevorkian, to pursue Senator Petris's line of  
3 questioning, which to me really goes to the substance of what  
4 he's concerned with and with others are concerned with, first  
5 let me state that there will be a bill introduced, and I've  
6 informed you, to establish a California Rail Commission, nine  
7 members -- five appointed by the Governor, four by the  
8 Legislature -- to fill that role.

9           And Senator Petris's questions relate to an issue  
10 which is fundamental to this commission, and by way of a  
11 foundation, what I've observed, as I have informed you, is that  
12 the Commission has been aggressive in taking on matters which  
13 exceed its statutory authority. And I know Senator Petris's  
14 comments, substantively, are well meaning, but what is suggested  
15 is beyond the statutory authority and purview of the Commission.

16           Let me take some examples. First of all, the  
17 Commission has been ambitiously pursuing a course of action of  
18 requiring regional agencies in Southern California to subscribe  
19 to a policy of electrification of rail lines. That's a policy  
20 matter.

21           Under the statute, this Commission is the last stop  
22 on a process which starts at the county level with the  
23 preparation of the County Transportation Improvement Program,  
24 then goes to a Regional Transportation Improvement Program, and  
25 then to the Commission for a decision.

26           What the Commission has been doing, at least some  
27 members -- not Mr. Kevorkian, I want the record to show. As a  
28



1 matter of fact, Mr. Kevorkian has struggled against this  
2 direction -- is to dictate that lines shall be electrified. And  
3 that has some ramifications, too, as you'll see in a bill  
4 introduced and passed, approved yesterday by the Senate  
5 Transportation Committee, and what the ramifications are for  
6 electric rate payers. And there's some rather ominous aspects,  
7 suggesting that rates will be increased in order to pay for the  
8 cost of electrifying rail. That presents a policy issue, too.

9           What I want to know is, Mr. Kevorkian, if you're  
10 confirmed, will you continue your efforts to stop the Commission  
11 from stepping over its statutory authority in this respect? And  
12 will you lead it in a way to stop it from continuing to do so?

13           MR. KEVORKIAN: Senator Kopp, as I discussed with you  
14 personally, I want to do what is best for the State of  
15 California.

16           As far as the electrification program, and our taking  
17 a posture that would dictate policy, I have related to you, and  
18 I will relate to the rest of the Senators here, that once again,  
19 I realize the legislative responsibility in this area. The  
20 Commission, I feel, should be working with the Legislature, and  
21 I don't want to see us in a position that we are dictating to  
22 you what you should be doing. I've never advocated that, and I  
23 never will.

24           So, I would like to think that those of us on the  
25 Commission would work in harmony with the Legislature and the  
26 Legislators that are interested in these specific fields.

27           And I agree with you that you should be the ones  
28





1 driving the car and making the decisions in harmony with us as  
2 far as respecting some of our opinions.

3 But I don't -- I never want to see us in the position  
4 of dictating to the Legislature what you should be doing.

5 SENATOR KOPP: Or to regional agencies which, under  
6 the statutes of California, possess the decision-making power  
7 with regard to an issue such as electrifying --

8 MR. KEVORKIAN: Well, we did not --

9 SENATOR KOPP: -- regional railways.

10 MR. KEVORKIAN: Actually, we did not dictate. The  
11 South Coast Air Quality District is the one that passed the  
12 resolution dictating what requirements should be made according  
13 to electrification.

14 There were some members of the Commission who  
15 expressed their support of this, but that's not something that  
16 we passed or even had the authority to mandate to the local  
17 districts or to the regions.

18 SENATOR KOPP: I'm trying to make a fine point here.  
19 I'm not arguing or inviting attention to the merits or demerits  
20 of electrification.

21 A second subject that I've observed as an ex officio  
22 member of the Commission is contracting out. At least some  
23 members of the Commission appear to believe that it's the  
24 Commission's role to establish a policy of more concentrated and  
25 a higher use of contracting out for transportation projects.

26 I would like you to memorialize your view on whether  
27 that is a proper power for the Commission to exercise.  
28



1           MR. KEVORKIAN: I don't believe, as we've discussed,  
2 we've ever had that power. All those requirements have been  
3 legislatively made. Senator Bergeson had a bill to that effect.

4           I think you're correct in stating that we did have a  
5 couple Commissioners who were very vocal on this contracting  
6 out, but I think that was initiated because of their concern  
7 that the Department of Transportation work as efficiently as  
8 possible, and that we get the projects out without delay.

9           But I don't think the majority of us ever assumed  
10 that we have the right to dictate what should be done, and I  
11 think we do realize that legislatively that is the  
12 responsibility of the Legislature.

13           SENATOR KOPP: The establishment of a California Rail  
14 Commission is a policy matter for this Legislature and the  
15 Governor to act on.

16           Will the Commission, insofar as your leadership is  
17 concerned, take a position of opposition to such a concept?

18           MR. KEVORKIAN: At this point, I can't say that we  
19 would. We have -- I have not seen the bill, Senator. I don't  
20 know how all encompassing it is, but all I can tell you, as I've  
21 previously stated, I am a strong supporter of rail. And if this  
22 bill and the passage of it is going to benefit rail in the State  
23 of California, there's no reason in the world that I would have  
24 any opposition.

25           SENATOR KOPP: The question that is even more  
26 pertinent is whether you believe the Commission should take a  
27 partisan position on the policy debate respecting such a  
28



1 concept, which would relate to inner-city rail along the lines  
2 and questions that I think you were asking, Senator Petris. Not  
3 usurping local agencies, whether San Diego, or BART, or LACTC,  
4 all these different corridors which people want to use for  
5 inner-city rail. We don't have a vehicle for that here in  
6 California. That's why we see a profusion of bills on the  
7 subject everytime someone has an idea for it. A bill has to be  
8 introduced, some mechanism has to be utilized. That's the place  
9 for a Rail Commission.

10 So the question is, will you urge, or will you deter  
11 the Commission from entering a partisan debate on that concept?

12 MR. KEVORKIAN: Two parts. The second part of that  
13 answer, I'll go back on it, but something that I've stated in  
14 public testimony in front of the Assembly Transportation  
15 Committee was the fact that I personally -- I don't believe the  
16 Commission on the whole has ever acted in a -- in a manner that  
17 would be partisan. I think we've always tried to be respectful  
18 of all the Legislators that have been involved in the  
19 transportation issues. I cannot recall in my fives years on the  
20 Commission one specific issue that we took with strong political  
21 ramifications in one direction or another.

22 So, as I said, as long as what is being proposed is  
23 meritorious, and I think it will benefit, or we, the Commission,  
24 think it will benefit the State of California, I see no way in  
25 the world that we would not support it, or for any other reason  
26 would take an against position on it.

27 The other thing, possibly very important, that we  
28





1 might -- should be -- if it's a legislative decision, that might  
2 be one area we might be just remaining neutral and let the  
3 Legislators decide what direction it should be taking.

4 SENATOR KOPP: Which might be judicious, too.

5 MR. KEVORKIAN: Yes.

6 SENATOR KOPP: The last question is, this Commission,  
7 as established by laws of the State of California, is an  
8 independent Commission. As its leader, will you exert every  
9 effort to assure that it is independent: independent of the  
10 executive branch and the other branches?

11 MR. KEVORKIAN: We always have tried to. I'll share  
12 something with you.

13 When I was initially appointed by Governor  
14 Deukmejian, I had no idea what I was --- when I first talked to  
15 him, he asked if there was an area that I would like to be  
16 involved in. I said, "Well, something where I would have some  
17 background. My background is in automotives, auto racing, Los  
18 Angeles, and I'm quite familiar with all the freeway systems,  
19 and having driven on the first Sunday the Royal Seeton Freeway  
20 was opened in the '40s."

21 And when I was called for this appointment, I  
22 mentioned to him, I said, "Governor, are there certain things  
23 that you would like me to be responsible for, or keep you  
24 informed on?" He said, "Ken," he said, "I would like you to use  
25 your best judgment in all areas you think would be important."

26 In other words, the point I'm making to you, I was  
27 never told that I would be responsible to one individual or one  
28



1 branch of the government. And I've always acted that way. And  
2 as I said, I think that I, in my five years, have established a  
3 rapport that is quite genuine with a large number of Legislators  
4 on both sides of the fence.

5 SENATOR KOPP: Thank you, Mr. Kevorkian.

6 Thank you, Mr. Chairman and Members.

7 CHAIRMAN ROBERTI: Thank you, Senator Kopp.

8 Are there any other questions?

9 Is there any opposition in the audience to the  
10 appointment?

11 SENATOR CRAVEN: Move.

12 CHAIRMAN ROBERTI: Senator Craven moves the  
13 confirmation be recommended to the Floor.

14 Secretary will call the roll.

15 SECRETARY WEBB: Senator Beverly.

16 SENATOR BEVERLY: Aye.

17 SECRETARY WEBB: Senator Mello.

18 SENATOR MELLO: Aye.

19 SECRETARY WEBB: Senator Petris.

20 SENATOR PETRIS: Aye.

21 SECRETARY WEBB: Senator Craven.

22 SENATOR CRAVEN: Aye.

23 SECRETARY WEBB: Senator Roberti.

24 CHAIRMAN ROBERTI: Aye.

25 The vote is five to nothing; confirmation is  
26 recommended to the Floor.

27 Norman Shumway, Member of the Public Utilities  
28



1 Commission.

2 Senator Pat Johnston is here to introduce Congressman  
3 Shumway.

4 We are being joined by the Chair of the Senate  
5 Energy and Public Utilities Committee, Senator Herschel  
6 Rosenthal.

7 Senator Johnston.

8 SENATOR JOHNSTON: Thank you, Mr. Chairman and  
9 Members.

10 It's my pleasure to introduce to the Rules Committee  
11 Public Utilities Commissioner Norman Shumway, who's seeking  
12 Senate confirmation for that position.

13 I've known Norm Shumway well over 15 years, from the  
14 time he served as a member of the San Joaquin County Board of  
15 Supervisors, and through his 12-year tenure as a Member of the  
16 Congress representing that area, and for ten years we served  
17 jointly the people of San Joaquin County. And over that entire  
18 decade, while we had differences of issues and philosophy, we  
19 are of different parties, we never once had a difference with  
20 respect to working for individual constituents and their  
21 concerns. I thought at all times Mr. Shumway was polite and  
22 thoughtful, intellectually honest.

23 I know, as you do, that there is some opposition to  
24 this appointment. I also note that those who are opposed are  
25 citing items in Mr. Shumway's congressional record.

26 All of us who have legislative records have issues  
27 that can be criticized by those who don't like the choices that  
28





1 we make.

2 I'd suggest, though, that the Rules Committee, which  
3 gave essentially a 12-month trial period to evaluate the  
4 performance of this nominee and other nominees, let that be the  
5 basis on which this Committee and this Senate decide the issue,  
6 and that witnesses reflect upon those decisions that have been  
7 made during the 12 months that Mr. Shumway has served on the  
8 Public Utilities Commission.

9 Finally, I think that you will find that Mr. Shumway  
10 has a keen intellect, a judicial temperament, and willingness  
11 exemplified over this 12 months of listening to all parties on  
12 the complicated, technological, and regulatory issues that face  
13 our Public Utilities Commission.

14 I strongly urge Mr. Shumway's confirmation as a  
15 Member of the PUC.

16 Thank you, Mr. Chairman.

17 CHAIRMAN ROBERTI: Thank you, Senator.

18 Now we'll ask Commissioner Shumway to tell us why he  
19 feels he's qualified to retain this position.

20 CONGRESSMAN SHUMWAY: Thank you, Mr. Chairman.

21 I would like to thank my dear friend, Senator  
22 Johnston, for introducing me here today. I've met all of you,  
23 but nevertheless, it's nice to have a friend like him repeat  
24 that introduction and open the way for my testimony before the  
25 Committee this afternoon.

26 In answer to your question, Mr. Chairman, I think I  
27 can unequivocally say that I can serve the people of California  
28



1 with integrity. I can use the education and experience that I  
2 bring to this position in making fair and equitable decisions at  
3 the Public Utilities Commission. And it's for that reason that  
4 I come here today seeking your confirmation. I desire to  
5 continue in this work, and I hope that you will see fit to allow  
6 me to do so.

7           Actually, I must tell you that one of the reasons I  
8 left Congress is that I got tired of running for re-election  
9 every two years, and I found that preparing for this hearing  
10 today, in terms of boosting myself and accounting for past  
11 activities, I was running for re-election again. It's been  
12 every bit as difficult as preparing for those biannual  
13 elections.

14           But I do appreciate the chance to come before you and  
15 to tell you a little bit about myself, and perhaps answer your  
16 questions.

17           I come before the Committee this afternoon as one who  
18 has practiced law in this state for many years. I know that may  
19 be a mixed blessing, but I think you recognize that in the  
20 practice of law, one develops a certain acuity of thought, a  
21 skill and reasoning ability, and in my case, that was no  
22 exception. I developed those skills in my legal career.

23           I also have, as Senator Johnston pointed out, an  
24 extensive background in public service: experience both local  
25 and federal. In those jobs, I learned how to deal with  
26 lobbyists and the media. I developed a very keen sensitivity to  
27 the feelings of people that I represent, and I gained a great  
28



1 deal of experience in the matter of making decisions and doing  
2 so in a thoughtful and fair-to-all sides style.

3         Maybe the greatest insight that I gained from my  
4 years in government service, especially in Washington, was the  
5 knowledge of separation of powers in our constitutional form of  
6 government. I fully am aware and recognize that you, the  
7 elected Legislators, make the laws. People like me, as  
8 commissioners, carry out those laws, and in doing so, follow the  
9 legislative intent.

10         In the 11 months that I've been in this job, I have  
11 been, I think, scrupulous in applying the law in decisions  
12 before the Public Utilities Commission. In fact, in many cases,  
13 I have had to go even beyond the face of the law as it appears  
14 in the code to discover what the legislative intent was behind  
15 that law, so I could be sure that we were applying what it was  
16 that you directed us to do.

17         So, I'm just suggesting to you, Mr. Chairman and  
18 Members of the Committee, that my legislative experience should  
19 be viewed as a positive thing, an asset, to the kind of service  
20 I can bring to the PUC. And I know in saying this that there  
21 will be some who will criticize, who perhaps felt that I did not  
22 vote often enough for their particular interest during the years  
23 that I was in public office.

24         But I know no one can accuse me of any lack of  
25 integrity or lack of closeness to the people that I represented,  
26 or a lack of capacity for hard work or for any lack of fairness  
27 to all sides of an issue.  
28





1 I think while there may well be gripes about my  
2 record in Washington, I would suggest again, as Senator Johnston  
3 did, that the real proof of the pudding is in my performance  
4 during the 11 months on the Commission. During those months, I  
5 have worked hard. I've participated fully. I've taken on some  
6 major and, in some cases, very controversial issues. I've been  
7 assigned cases that have been very significant, and I'm very  
8 proud of the decisions that we have made in those cases.

9 One of the first issues that was handed to me as a  
10 new Commissioner was the proposed merger between Southern  
11 California Edison and San Diego Gas & Electric. Because we were  
12 new to the Commission and its business, we found it necessary to  
13 really get to the bottom of that issue. We spent many, many  
14 hours, days, and weeks reading the record, researching the law,  
15 and being sure that we were applying the law in a very correct  
16 manner.

17 We did reject the merger, and in doing so, we felt  
18 that the merger simply did not comply with what Public Utilities  
19 Code Section 854 said, that there be net benefits to rate payers  
20 in the long-term, and no adverse consequences to competition.

21 I've also been very active in the subject of the  
22 development of natural gas vehicles. We recognized early on  
23 that there are rate payer benefits to be had here. Clean air  
24 and the transportation technology that might foster it is of  
25 great interest to all of us as Californians. So, we have given  
26 encouragement to the utilities who have roles to play to move  
27 ahead with the development of natural gas vehicles.  
28



1 I've been very active in the subject of demand side  
2 management. I see this as a way that we can promote energy  
3 conservation programs, and even though it requires that we're  
4 spending money now, I think it's well shown that money spent now  
5 will mean decreased future energy demands, and ultimately  
6 reduced need for additional generation. So, I have spoken out  
7 and been very active in Commission decisions in this regard and  
8 intend to continue to do so.

9 A more recent case that I was involved in, again  
10 construing a law which we were given by the Legislature some  
11 years ago, this one, the Local Government Privatization Act, was  
12 the case which we called EOS Petaluma. We denied the  
13 application of EOS Petaluma to create or to recognize an entity  
14 to operate a waste water treatment plant for the City of  
15 Petaluma without it being considered a public utility, and  
16 therefore, being exempt from regulation from the CPUC. Again,  
17 this case, this was a case of first impression for the Public  
18 Utilities Commission. Because there were some inconsistencies  
19 in the Government Code sections and Public Utilities Code  
20 sections, it was necessary to do a great deal of research and  
21 discovery of legislative intent to adequately apply the law, as  
22 I think we did in that case.

23 I was active in the development of an ex parte rule  
24 that came quite late in the procedure, but nevertheless, we have  
25 one now, and we think that it will be in keeping with what it  
26 was the Legislature, indeed, wanted us to do.

27 I've been assigned by my fellow Commissioners to be  
28



1 the lead Commissioner with reference to verification of WMBE  
2 programs. In that regard, I have a strong personal interest. I  
3 think it's a very fair law, and we've been called to carry it  
4 out, and we are watching very carefully the present rule-making  
5 which is before the Commission. We are probably going to  
6 tighten up on utility reporting requirements.

7  
8 There is still a great deal of work to do in terms of  
9 verifying that certain firms do come within the category of WMBE  
10 firms. For example, we've identified some 25,000 such firms in  
11 the State of California. Yet to date, only 4,000 of them have  
12 been cleared or verified. So, there's a great deal of work to  
13 do.

14 But we intend to streamline the process. We intend  
15 to see it through to its full implementation at the Public  
16 Utilities Commission, as well as those utilities that we are  
17 charged with regulating.

18 These and many other cases, Mr. Chairman and Members  
19 of the Committee, I think, demonstrate that I have gotten  
20 involved in the mainstream of the work that's before the  
21 Commission. I've not shied away from any assignments. I find  
22 it a very challenging place to work. It's challenging  
23 intellectually, challenging professionally, and I think for that  
24 reason, it's been a very satisfying job to me.

25 It's for that reason that I would like to continue  
26 and am therefore very anxious to gain your support, and be very  
27 happy to answer your questions.

28 CHAIRMAN ROBERTI: Thank you very much.





1 Are there any questions? Senator Mello.

2 SENATOR MELLO: Mr. Chairman, I have a series of  
3 questions here.

4 The first one, I see you also serve on an  
5 organization called the Federal Legal Services Corporation.

6 CONGRESSMAN SHUMWAY: I do.

7 SENATOR MELLO: And you do draw remuneration from  
8 serving on that entity?

9 CONGRESSMAN SHUMWAY: There is no salary paid for  
10 service, but there is a per diem per meeting fee paid for  
11 participation.

12 I'm a member of the Board of Directors. There are 11  
13 Directors. They're appointed by the President. We meet at  
14 least four times a year.

15 SENATOR MELLO: What do you draw in the way of this  
16 so-called per diem, and expenses, I understand?

17 CONGRESSMAN SHUMWAY: Legal Services Corporation  
18 reimburses expenses and pays \$300 per meeting as a meeting  
19 attendance fee.

20 SENATOR MELLO: And you're allowed to have six  
21 meetings per year; is that correct?

22 CONGRESSMAN SHUMWAY: A minimum of four. Last year,  
23 I believe, the Corporation met perhaps ten times.

24 SENATOR MELLO: What is the purpose of the  
25 Corporation?

26 CONGRESSMAN SHUMWAY: The Corporation supervises the  
27 distribution of money appropriated by Congress to agencies which  
28



1 are designated to provide legal services, civil legal services,  
2 to the poor.

3 Pursuant to the most recent appropriation, during the  
4 coming fiscal year, the Corporation will distribute \$350  
5 million. And the Board of Directors makes decisions as to the  
6 granting of money to the program agencies and also has a  
7 responsibility for general oversight to see that they are  
8 complying with the intention of Congress.

9 SENATOR MELLO: Is this the entity that has oversight  
10 or jurisdiction over organizations such as the California Rural  
11 Legal Assistance?

12 CONGRESSMAN SHUMWAY: Yes, it is.

13 SENATOR MELLO: While you were a Member of Congress,  
14 did you support the funding for the CRLA in California?

15 CONGRESSMAN SHUMWAY: I did not. In fact, I at one  
16 time introduced a bill to disband the Legal Services Corporation  
17 while I served in Congress.

18 SENATOR MELLO: You agreed, I guess, with former  
19 President Reagan, at that time as Governor, because he was  
20 trying to eliminate the CRLA.

21 CONGRESSMAN SHUMWAY: At that time, the stories that  
22 we were hearing back about the kind of services provided by  
23 Legal Services convinced many of us in Congress, irrespective of  
24 President Reagan, that the Corporation was simply missing its  
25 statutory objective. And therefore, rather than try to refine  
26 that objective, it was very controversial at that time, it  
27 seemed to me that the best remedy would be to put it out of  
28



1 business.

2 I have since repented of that position, obviously.  
3 I'm serving on the Board of Directors. But I felt at the time  
4 that was the adequate remedy.

5 SENATOR MELLO: What I think is important now is the  
6 fact that you're being paid, even though it's a small amount.  
7 You are on this Corporation and receive reimbursement for your  
8 services plus expenses, oversight of providing legal services to  
9 the poor.

10 Do you feel in your own mind -- there's many  
11 questions that come before the PUC dealing with certain programs  
12 that affect poor people: those lifeline rates, those that have  
13 programs for the collection of the utility bills. Sometimes  
14 they can't pay, and the Commission requires, then, the utilities  
15 to delay the collection of those bills to not put a person out.

16 Do you see those kind of conflicts coming up?

17 CONGRESSMAN SHUMWAY: Certainly those observations  
18 can be taken, but let me just point out, Senator Mello, that my  
19 opposition to Legal Services in Congress was not based upon any  
20 lack of sympathy or prejudice about the poor.

21 I recognize that we have poor. I recognize they need  
22 legal help as much as anyone, perhaps more in some cases. And I  
23 recognize a role for the federal government in providing that.

24 When I took this position as a Member of that Board  
25 of Directors, I made it very clear in press responses that I was  
26 coming to serve on the Board of Directors of Legal Services  
27 Corporation not to cripple the organization, not to disband it,  
28





1 not to undermine its role, but simply to see that the purposes  
2 of Congress are carried out, and that we do provide the kind of  
3 legal services to the poor that Congress intends.

4 That was the statement of President Bush. I  
5 subscribe to that statement. I'm committed to carrying that out  
6 as a member of that Board.

7 With reference to my work on the Public Utilities  
8 Commission, I know that there may well be some concerns in that  
9 regard, but again, I fully recognize that the poor need a degree  
10 of assistance that otherwise, perhaps, cannot be had except  
11 through such things as lifeline telephone rates, baseline energy  
12 rates, DSM programs which provide weatherization and benefits  
13 like that, and cut energy costs. And I fully subscribe to and  
14 support those programs of the PUC.

15 SENATOR MELLO: One of the letters that I have here  
16 indicates some questionable association with the savings and  
17 loan industry. I don't know what that is. I'd like to give you  
18 a chance to explain that.

19 I'm trying to find the letter, but that's the quote  
20 from a letter I received.

21 CONGRESSMAN SHUMWAY: I don't think the association  
22 was questionable. One might question my role, but I had no  
23 questionable or underhanded association with it.

24 I had the fortune, or perhaps misfortune on  
25 retrospect, of sitting on the Banking Committee of the House for  
26 the 12 years that I served in Congress. During those years,  
27 there were some very key decisions made about the banking and  
28



1 the savings and loan industry, very obviously.

2       Early on, one of the important decisions was whether  
3 to deregulate the industry to such an extent that it might be  
4 able to keep up with what was happening in the money market  
5 funds industry. There was a great deal of what we call  
6 disintermediation: people were taking their money out of banks  
7 and savings and loans; investing it in money market funds  
8 because there was a much better rate of return.

9       At that time, we put a cap on how much interest and  
10 other benefits banks and savings and loans could pay. We took  
11 the cap off in order to allow those institutions to compete more  
12 effectively in the marketplace, and that was a very  
13 controversial decision, but it happened while I was there. I  
14 was part of that effort

15       But I don't think that is the same as saying that I  
16 have some questionable relationships. I dealt with them in a  
17 very arms-length kind of relationship, and dealt with them  
18 during the 12 years I served on that committee.

19       SENATOR MELLO: Did you receive any contributions  
20 from the savings and loans entities while you were in Congress?

21       CONGRESSMAN SHUMWAY: I received campaign  
22 contributions, of course, from banks and savings and loans, and  
23 all kinds of industries. But I went back and looked through my  
24 record, and during all of the years that I served on that  
25 committee, never did contributions from the financial sector --  
26 this would include banks and S&Ls -- amount to more than 16 --  
27 that's one-six -- percent of my total contributions.  
28



1           SENATOR MELLO: What are we talking in dollars?

2           CONGRESSMAN SHUMWAY: Well, the average rate for  
3 Congress was somewhere between \$250,000 or maybe \$350,000. I  
4 don't know what that translates out to, but it's certainly less  
5 than a quarter, and I think not an undue sum compared to some  
6 members of that committee. My contributions were relatively  
7 minor.

8           SENATOR MELLO: Is it fair to assume that 16 percent  
9 of your contributions, amounting to, say, \$250,000, for six  
10 terms in Congress, would that be a fair representation of the  
11 funds that came from banking and savings and loan entities?

12          CONGRESSMAN SHUMWAY: I think perhaps yes, although  
13 I'm not certain that my percentage of support from those  
14 organizations during my early years in Congress was that high.  
15 I think perhaps 16 percent reflects the high watermark. Early  
16 on, of course, I got virtually no support from those  
17 organizations.

18          But I think that my support, even though I sat on the  
19 Banking Committee, was not very much different from other  
20 Members of Congress that likewise received support from the  
21 financial services industry.

22          SENATOR MELLO: What about the utilities while you  
23 were a Member of Congress? Do you have a record of accepting  
24 contributions from utilities that now you'll be regulating?  
25 You're wearing a different hat, of course, as a Member of the  
26 PUC.

27          CONGRESSMAN SHUMWAY: I may have received  
28





1 contributions from utilities, Senator, but I frankly have no  
2 recollection of it, no record of it that I know of, and I don't  
3 desire to pursue it.

4 As far as I'm concerned now, it's a clean slate. No  
5 one has bought any favors. I owe no favors in that regard, and  
6 I don't intend to change that.

7 SENATOR MELLO: You may not want to pursue it, but I  
8 think it's fair to find out.

9 What I'd like to know, on your financial statements  
10 that you're required to report to Congress, as we are to the  
11 State, can those be made available to our staff person?

12 CONGRESSMAN SHUMWAY: They can. I have copies, and  
13 I'd be very happy to make them available.

14 SENATOR MELLO: If the Chair would agree, I'd like to  
15 see to what extent this may be a question.

16 I'd like to turn now to what I think is the major  
17 issue. I think Mr. Carl Jones is here representing the Congress  
18 of California Seniors. They have provided all of us with your  
19 voting records on issues while serving as a Member of Congress.  
20 And the national senior citizen organizations have selected each  
21 period ten of the major issues that they felt were very  
22 important to senior citizens.

23 I have all copies here. I'm sure you have copies as  
24 well. In total, there's a total of 60 issues that they felt  
25 were important to senior citizens. You voted wrong, according  
26 to them, 57 times and voted right 3 times. So, you have a total  
27 of 3/60, which figures out to be a 5 percent voting record in  
28



1 support of issues with senior citizens.

2           Now, looking at it on a year-by-year basis, like in  
3 1990, out of 45 Members of Congress from California on the  
4 delegation, you are the only Member to have a zero voting record  
5 with senior citizens. It goes on to all these other sheets.  
6 Sometimes you have a zero; there might be one other Member  
7 that's a zero; other times, you have one right vote. You have a  
8 total of 3 right votes --

9           CONGRESSMAN SHUMWAY: One year I got 10. Give me  
10 credit for that.

11           SENATOR MELLO: Well, 10 is only 10 percent; that's  
12 one out of 10, but your average is still 5 percent.

13           The reason this comes about is, I think it's an  
14 important issue because there's so many issues that come before  
15 the California Public Utilities Commission that affect  
16 everybody, of course. But very importantly, it affects a lot of  
17 senior citizens.

18           I just find it inconceivable -- I happen to serve as  
19 Chairman of the California Senate Subcommittee on Aging, so I  
20 try to keep on top of a lot of issues as they come about -- but  
21 I just wonder. You and I had a discussion on Friday. I was  
22 trying to figure how someone with this very poor record,  
23 according to their organization, how that person could sit on  
24 the California Public Utilities Commission and then view the  
25 world differently from your perspective when it comes to basic  
26 lifeline rates, programs for the hearing impaired and sight  
27 impaired, other impairments, other considerations that are there  
28



1 as a matter of standing for many, many years.

2 And what I'm trying to get before the Committee here  
3 is, how can you suddenly change from your overall perceptions of  
4 senior citizens, your overall philosophy of senior citizens, and  
5 start to be a compassionate member of the Public Utilities  
6 Commission and offer a complete 180 degree turnaround and become  
7 supportive for issues now that you have opposed during your  
8 career as a Member of Congress?

9 CONGRESSMAN SHUMWAY: Well, that's a very fair  
10 question, Senator, and I anticipated that you would ask it,  
11 because I know of your interest and your championing the cause  
12 of senior citizens.

13 Carl Jones kindly supplied copies to me of the  
14 reports that he will testify to later this afternoon, and I have  
15 had a chance to analyze those votes. And I don't think it would  
16 serve any purpose to go through them one-by-one; there are too  
17 many.

18 But suffice it to say that I don't -- I'm not here to  
19 run away from my record in Congress. I'm proud of my record. I  
20 -- every vote that I cast was a very carefully taken, reasoned  
21 vote. There were reasons for voting as I did on all issues.

22 But during all of the 12 years that I served in the  
23 House of Representatives, I served on the Aging Committee. And  
24 for many of those years, I was the ranking minority Member of  
25 the Retirement Subcommittee, and I was very involved in the  
26 development of issues. That committee did not report out bills  
27 because it was not a standing committee. But I conducted  
28





1 several hearings of the committee. I brought the committee  
2 twice to California for hearings.

3 I took a very active role with reference to senior  
4 citizens' issues that may not be reflected by the statistics  
5 that you have before you and that Carl Jones will testify to  
6 later. Those statistics were developed by the National Council  
7 of Senior Citizens. And in the little review that I did, I went  
8 back over the last four years; this would be '90, '89, '88, and  
9 '87. During those years, looking at all of the Members in  
10 California, 43 or 45 as the case may be, the average score --  
11 rather, the range of scores for Republicans like me was from a  
12 low of 6.5 percent to a high of 11.9 percent. Those are  
13 cumulative percentages during the four-year period. The average  
14 for Democrats during those same years was 93.2.

15 I think you can see that this particular analysis of  
16 how we vote in Congress was very much tilted toward a particular  
17 party kind of display. It was the kind of thing that would --  
18 it was designed to make Democrats look good and Republicans look  
19 bad. It really was not the kind of objective measurement that I  
20 would offer someone if we really wanted to find out what it was  
21 that Congress did regarding senior citizens.

22 This record does not show anywhere among the votes  
23 that it reports that I not only supported, but I defended and  
24 voted for reauthorization of the Older Americans Act, the most  
25 important piece of generic legislation affecting senior  
26 citizens. It provides for the senior lunch program, the  
27 congregate housing program, the meals-on-wheels programs,  
28



1 transportation program. I was a supporter of that and very  
2 defendative [sic] of it when it was debated in the House.

3 I was also a champion of the issue of amending the  
4 earnings limitation for Social Security recipients, a very  
5 popular issue in my district and, I think, throughout the  
6 country. I opposed taxing Social Security benefits. I favored  
7 taking trust funds that were set aside for Social Security off  
8 the budget. Very popular issues among senior citizens.

9 I opposed catastrophic health care and was  
10 instrumental in seeing that bill repealed. I introduced a bill  
11 to allow seniors to stay at home and receive Medicare benefits  
12 at home rather than being confined in nursing homes. I was a  
13 leader in terms of providing health care services to rural  
14 areas; my district was very rural. And I saw to it that there  
15 was adequate Medicare reimbursement to rural hospitals.

16 I did many things that I could quantify for you that  
17 were positive steps toward preserving the life-style for senior  
18 citizens that will not be reflected in these vote totals that  
19 Carl Jones will supply to you. I'm just saying that that's not  
20 an adequate representation of my concern.

21 Finally, I would say that because of that, I really  
22 don't think I'm doing a 180, or changing my stripes, or somehow  
23 going to be a different person on the Public Utilities  
24 Commission. I still have a great deal of concern for  
25 California's seniors. I will act to their best interests, and I  
26 will support those programs that will give them the most  
27 generous kind of life-style.  
28



1 CHAIRMAN ROBERTI: Senator Mello, I think we're going  
2 to take a break for five minutes, then we will return to you.

3 SENATOR MELLO: I have just one more question.

4 CHAIRMAN ROBERTI: We'll return to you.

5 SENATOR MELLO: All right, very good.

6 [Thereupon a brief recess was taken.]

7 CHAIRMAN ROBERTI: The Committee will reconvene.

8 We'll continue with Senator Mello's questioning.

9 After the Senator is finished, what I would like to do to  
10 accommodate people who have traveled here to testify on the  
11 nomination is to hear them. I think a number of them have  
12 indicated they have to take planes. Then we will see where the  
13 hearing brings us.

14 So Senator, you have another question.

15 SENATOR MELLO: Yes, I just wanted a short follow-up.

16 The information you gave us, of course, was your own  
17 statistics, and we do not have that here.

18 As I recall, you said it ranged from 6.5 percent to  
19 11 percent, and I guess you're alleging that the Congress for  
20 Senior Citizens is more partisan than anything else, and so  
21 forth, but that's to be determined. I've found it very  
22 bipartisan.

23 My question to you is, where do you rank among your  
24 colleagues in the Republican Party from that range of 6.5  
25 percent to 11 percent? Are you at the top, the bottom?

26 CONGRESSMAN SHUMWAY: Just looking at the cumulative  
27 figures for 1990, which I guess would be the best indicator of  
28





1 where I stand, I am at 5. David Dreier, Congressman Dreier, is  
2 also at 5. One at 6, two at 8, one at 7, so I'm tied for last.  
3 I'm on the bottom.

4 SENATOR MELLO: That's not contradictory of the  
5 findings of their score. I did not add them up for all the  
6 years, but I know that you were last one year, and you tied for  
7 being last on the second year.

8 CONGRESSMAN SHUMWAY: In 1990.

9 SENATOR MELLO: You had one in the earlier years as  
10 well. One year you had one out of 10, and so forth.

11 I just want to close by saying that I don't want to  
12 give the impression that the only opposition coming from seniors  
13 is from Mr. Carl Jones or the organization which he represents.  
14 We have letters from the Seniors' Council of Santa Cruz-San  
15 Benito County; of course the Congress of California Seniors'  
16 officers which comes from Alameda, Contra Costa, Napa and Solano  
17 Counties, Mr. Harris, Trustee and Senior Assemblyman, and Elsie  
18 Harden, the President; of course, Carl Jones; another Mr. Rowe  
19 from Santa Cruz, and Sima Revsen from Berkeley. She's a Senior  
20 Assemblywoman from the County of Alameda. I think there are  
21 other additional letters as well.

22 I think throughout the state there's individuals and  
23 senior groups who have expressed opposition to your  
24 confirmation, and I think it's primarily from your voting record  
25 in the House of Representatives, which are a matter of record.

26 Thank you, Mr. Chairman.

27 CONGRESSMAN SHUMWAY: Could I just respond briefly,  
28



1 Mr. Chairman?

2 CHAIRMAN ROBERTI: Yes.

3 CONGRESSMAN SHUMWAY: Thank you.

4 I think it's significant to keep in mind, though,  
5 Senator, that all of those groups that have written in  
6 opposition, senior groups, are all reading from the same script.  
7 They're all looking at the same rating score compiled by the  
8 National Council on Senior Citizens. It was mailed out en mass  
9 to all such agencies in California. Many of them had meetings  
10 and responded as those letters indicate.

11 It does not reflect the kind of even-handed analysis  
12 of my voting record that I'm urging the Committee to consider.  
13 It seemed to me, during the years that I was in Congress, that  
14 one of the best things that I could do for senior citizens would  
15 be to preserve the value of their retirement funds by at least  
16 slowing down the rate of inflation. And the way -- the best way  
17 it seemed to me to do that would be to hold back on government  
18 spending, and particularly to try to reduce the federal deficit.  
19 And so, many of my votes were calculated to do just that.

20 I would like to suggest to you that from a senior  
21 citizen point of view, I don't think there's a better thing I  
22 could have done. I voted against a lot of loaded programs. I  
23 voted against new programs. I voted against expanded bills.  
24 But I did it not because I'm anti-senior citizen or have some  
25 particular prejudice in that regard, absolutely not. I did it  
26 because I think we need to do something about deficit spending.  
27 We're leaving a legacy to our grandchildren that is not very  
28



1 attractive. And I felt the best way to get at that problem was  
2 to reduce federal spending.

3 SENATOR MELLO: On the very same point, I recollect  
4 the cartoons and the statements that were made.

5 Try to tell the senior citizens that the reason I'm  
6 not providing a home-delivered meal, or a congregate meal, or  
7 some health care service for you, or protecting Social Security  
8 is for holding down inflation so you're going to be better off  
9 five, ten, or fifteen years from now. They just won't buy it,  
10 because they're looking for what's going to happen to them  
11 today. Who knows what's going to happen tomorrow?

12 That philosophy's been carried forth time and time  
13 again, because it's now -- if you were to share that philosophy  
14 with senior citizens who are needing of help -- many are wealthy  
15 and don't need that, but the ones that do are not going to buy  
16 that argument at all.

17 CONGRESSMAN SHUMWAY: Well, I'm a senior citizen. I  
18 have 12 grandchildren. I give often to the AARP and have for  
19 many years. And I've very involved in their affairs. And I  
20 would like to see our government spend less money.

21 I also voted to support those programs which you made  
22 reference to when I supported the Older Americans Act. That's  
23 where all of those programs come from. I supported that Act; I  
24 voted for it.

25 SENATOR MELLO: Thank you.

26 CHAIRMAN ROBERTI: Thank you, Senator.

27 I think we'll take people who are here to testify.  
28





1 Who has to catch a plane?

2 Mr. Jones, Mr. Carl Jones, would you please come  
3 forward.

4 CONGRESSMAN SHUMWAY: Would you like me to leave the  
5 table?

6 CHAIRMAN ROBERTI: It's your choice. You can stay  
7 there.

8 CONGRESSMAN SHUMWAY: Thank you.

9 MR. JONES: Chairman Roberti, Members of the Senate  
10 Rules Committee, my name is Carl Jones, and I'm retired and  
11 living in Cameron Park.

12 I'm speaking here on behalf of the member of the  
13 Congress of California Seniors, which is also an affiliate of  
14 the National Council of Senior Citizens.

15 I appear here in opposition to the nomination of Norm  
16 Shumway to be a member of the Public Utilities Commission.

17 Beginning with 1985, and concluding in 1990, the  
18 National Council of Senior Citizens tracked the voting record of  
19 each Congress Member on 10 issues each year, a total of 60  
20 issues. Each Congress Member's vote was rated, and while  
21 Congressman Shumway had the worst record of any Member from  
22 California, there were only four Members of the entire Congress  
23 with a lower rating: two from Utah, and one each from Texas and  
24 Ohio.

25 Congressman Shumway voted in favor of the National  
26 Council of Senior Citizens' position on these issues only three  
27 times, and against the NCSC's position 57 times. Now, even a  
28



1 blind sow could find a few acorns.

2 I don't believe Mr. Shumway's voting record protected  
3 the consumers and/or senior citizens on these 60 issues. And I  
4 believe that voting record is just reason to deny him the  
5 appointment to the PUC Commission.

6 While we are not sure how he would vote, we certainly  
7 know how he voted on those 60 important issues in the past,  
8 poor. We cannot afford the luxury of an appointment to this  
9 position which controls the very living standards for many of  
10 our citizens. We cannot afford to place a "come" bet in this  
11 situation.

12 Many of our people cannot afford decent housing.  
13 Many cannot afford prescription drugs. Many children are  
14 hungry. It isn't necessary to go to Russia to find hardship.

15 Where there is doubt, we cannot take chances. It  
16 would be too late to change after the appointment.

17 The Congressional Record printed by the Congress, and  
18 the Congressional Quarterly were the source of votes and  
19 descriptions of legislation for this voting record.

20 The voting record was not developed to select out  
21 Republicans, or Democrats, Communists, or rednecks, or so on.  
22 It was the vote of the people elected there in the Congress, and  
23 it was taken from the Congressional Record on those issues.

24 There is no separating each Member for rating because  
25 of party affiliation or otherwise to differentiate in any way.  
26 In other words, all Members of Congress were rated solely upon  
27 their votes on the same issues, issues which are considered very  
28



1 important for seniors and consumers by the National Council of  
2 Senior Citizens.

3 Thank you for permitting me to appear and speak to  
4 this issue. I urge you to vote no.

5 I'd like just to comment a little bit about the  
6 National Council of Senior Citizens. The inference was left  
7 here that it was some kind of I don't know what the Congressman  
8 was referring, but RBJ [sic], when he signed that national -- or  
9 signed the Medicare, made the statement, "Had it not been for  
10 the National Council of Senior Citizens, there would have been  
11 no Medicare."

12 The National Council is a very honored and very  
13 dignified, well-educated group of seniors that have been working  
14 since the Medicare proposal came up in '61, in spite of some of  
15 the other senior organizations -- Mr. Shumway and advocates --  
16 who were out fighting it, calling it socialized medicine,  
17 Medicare.

18 These issues were good issues. They're issues that  
19 are sound, and there was nothing slanted about the selection of  
20 them.

21 Otherwise, that's the way the ball bounces.

22 CHAIRMAN ROBERTI: Thank you very much, Mr. Jones.

23 Who else in the audience would like to come forward  
24 and testify? Please come forward.

25 MS. WILDER: Thank you, Chairman Roberti and Members  
26 of the Committee.

27 My name's Deborah Wilder. I am the Executive  
28





1 Director of the California Chapter of Women Construction Owners  
2 and Executives. We are a national association of women  
3 contractors, and myself am a small business owner.

4 I'm not here today to officially oppose Mr. Shumway's  
5 confirmation, but I do have some very serious concerns which I  
6 believe this body and those sitting on the PUC need to take very  
7 seriously.

8 As Mr. Shumway has said, there is a WMBE program to  
9 outreach to small business, to ask them to come and do business  
10 with various utility companies. We are very concerned with what  
11 we see as a smoke screen on the part of the utilities to present  
12 very nice figures and very flashy reports, but in reality are  
13 not in anyway assisting the minority women business community.

14 We are not looking for handouts. We are not looking  
15 for someone to give us a contract. We are looking for an  
16 opportunity to compete on a level playing field.

17 I would like to give you a few examples of actual  
18 cases that have happened to WCOE members throughout this state  
19 over the last 18 months.

20 A number of utilities have come to various WCOE  
21 meetings. We have meetings all the way from San Diego up to  
22 Eureka. They come and say, "We would like you to do business  
23 with us. Please come pick up the bid documents. We really want  
24 you to work with us."

25 When you go to pick up those bid documents, some of  
26 the responses our members have received are as follows: "When  
27 we get there, we are asked, 'Are you a union contractor? If  
28



1 your answer is no,' we have specifically been told, 'Well, you  
2 cannot bid with us.'"

3 WCOE is both union and non-union contractors. We  
4 don't make a distinction, and we don't think utility companies  
5 should either.

6 The other response that we have gotten as we come to  
7 get bid documents, and this happened in November, two utility  
8 companies told us, "We're glad to see you, but we've already met  
9 our quotas this year. Come back and see us next year."

10 In other situations, we submit bid documents, and  
11 when bid day comes, they open the bids, and "Golly-gee, we can't  
12 find your bid packets. We must have lost it somewhere." This  
13 doesn't seem to happen to other contractors.

14 In other instances, the various utilities, and that  
15 includes public as well as what I would call private utility  
16 companies, will let what's called purchase order or emergency  
17 contracts. What happens is, a utility will say, "Look, we need  
18 to let an emergency contract for \$200,000. We will call you  
19 when we have an emergency." I have an electrical contractor who  
20 got an emergency contract for \$200,000. She was required by  
21 this utility company to put out additional money for additional  
22 insurance and bonding. That utility company took credit for the  
23 \$200,000 maximum amount on that purchase order, yet that  
24 contractor did not receive one dollar of emergency service that  
25 entire year.

26 Again, they ask us to come and be certified, and come  
27 in and get on their data base. I have contractors who have gone  
28



1 to utility companies again and again who say, "I want to do  
2 business with you. You say you want to do business with me.  
3 I'm a general contractor. I have the capacity to do \$5 million.  
4 I have the capacity to do \$2 million jobs with you."

5         What my contractors are getting are contracts for  
6 \$10,000 or \$20,000. And yet when we say, "I really don't want  
7 to do \$10,000; it's not cost effective for me because the kind  
8 of business I have addresses a different market," the response  
9 we have received from the utility companies is, "Well, you  
10 obviously don't want to do business with us, so we won't put you  
11 back on the list."

12         In other instances we have contacted the EEO  
13 officers, the people designated to assist in the outreach  
14 program. We have gone to them after we have gotten contracts  
15 and are working within the utility company and say, "We're  
16 having a problem. We're not being paid on time." "This  
17 contractor got a change order. He's doing the exact same work  
18 we are; we can't get our change order. Why are we being treated  
19 differently?"

20         We've gotten two different responses. We've gotten  
21 responses that say, "My only job is to get you in the front  
22 door. I can't help you once you've gotten here."

23         The other response I've gotten is, "If I took that to  
24 my boss, I'd lose my job."

25         This is not what I believe was either the intent or  
26 the purpose of that law that was passed.

27         I have a very specific instance that occurred in  
28





1 August, where one of the WCOE members bid to a public utility  
2 company, was called, and, "Gee, you know, you're the low bidder.  
3 You should have the contract in a couple of days.  
4 Congratulations."

5 Two days later, this contractor got a letter from the  
6 EEO office saying, "Thank you very much. We don't need your  
7 services," and I don't know whatever happened to that contract.

8 There's an ad that was recently run by PG&E in the  
9 MBE Magazine, and it states that over one-half of all their  
10 minority/women-owned businesses that bid to them actually get  
11 contracts. That might be true, but I can't get a bid in the  
12 front door.

13 In other instances, utility companies have continued  
14 to use the same contractors again and again and again to meet  
15 their minority/women-owned goals. I see nothing wrong with  
16 continuing to use a contractor with whom you have a good  
17 relationship and does good work for the company.

18 My problem is that a number of these companies were  
19 grandfathered in into the certification process with the  
20 clearing house. WCOE takes pride in attempting to monitor the  
21 front in the industry. We police our own. We will write  
22 letters and challenge the certification of women and  
23 minority-owned contractors ourselves because we believe that  
24 only if we keep the process pure and with integrity will it  
25 work.

26 I have written letters on behalf of the Association  
27 to the Cordova Corporation, who is in the clearing house. I  
28



1 have been informed that, "I'm sorry. We can certify these  
2 people," but I can't de-certify them because they go to the  
3 utility companies, and the utility companies say, "We're paying  
4 the clearing house. You can't de-certify these people we're  
5 working with."

6 This gives us a feeling that, although there's a lot  
7 of sound and fury, there's not much substance to the program.

8 The instances I have given you, unfortunately, do not  
9 apply to one utility. All these specific cases have come from  
10 the following utilities: San Diego Gas & Electric, Southern  
11 California Edison, Southern California Gas, GTE, AT&T, Pacific  
12 Bell, and PG&E. And I have other similar instances that I've  
13 been building in my office for the last 18 months.

14 There are changes now proposed in regulations. I see  
15 those changes as gutting the process that is already in place, a  
16 process which I see as being inadequate.

17 What I'd like to see from anyone who serves on the  
18 Public Utilities Commission is not only a commitment to the  
19 letter of the law, but the spirit of the law in holding utility  
20 companies to task, not just look at their nice, pretty, glossy  
21 reports, but holding them to task on their commitment.

22 I mean, it would be better for me if you just said,  
23 "Don't even bother to come in the front door," than to open your  
24 arms and say, "Come here," and then slam the door in my face.

25 I am asking that anyone who serves on the Utility  
26 Commission, not only Mr. Shumway, but anyone, should hold these  
27 utility companies accountable under the current state of the  
28



1 law.

2 I appreciate the opportunity to be here today and  
3 impart these facts to you.

4 CHAIRMAN ROBERTI: In other words, you're saying that  
5 generally, utilities try to drag their feet on enforcing various  
6 statutes that we have on equal opportunity and things of this  
7 nature?

8 MS. WILDER: Yes. Yes, sir.

9 CHAIRMAN ROBERTI: And your general feeling is that  
10 you haven't gotten recourse from the PUC?

11 MS. WILDER: No. We've gone specifically -- in  
12 several instances we have gone to the utility companies  
13 themselves, and have mentioned it to their EEO people and the  
14 outreach people. We get told, you know, "Fine. Thank you very  
15 much."

16 We have mentioned it in the past to some people on  
17 the Public Utilities Commission. And again, I'm not sure we're  
18 getting satisfaction.

19 To be totally fair, there are members of WCOE that  
20 have contracts with utility companies that have not had  
21 problems, but the vast majority of them are having difficulty  
22 getting in the door.

23 CHAIRMAN ROBERTI: Thank you.

24 Senator Petris.

25 SENATOR PETRIS: Have you discussed this at all with  
26 Mr. Shumway during the short time he's been on the Commission?

27 MS. WILDER: No, sir, I have not.  
28





1           And again, it's not a reflection merely on  
2 Mr. Shumway, but to all people who sit on that Commission.

3           SENATOR PETRIS: Thank you.

4           MS WILDER: Thank you.

5           CHAIRMAN ROBERTI: I thank you as well.

6           Next witness.

7           MS. GOLDEN: Thank you, Mr. Chairman, Members.

8           For the record, I'm Sherrie Golden, representing the  
9 California State Employees' Association.

10           We have heard from our retirees, our senior citizens  
11 also, and also our people who are rank-and-file people who are  
12 low-paid people. And they are concerned because I believe we  
13 definitely have a difference in philosophy here.

14           Mr. Shumway -- Congressman Shumway's record in  
15 Congress on labor issues is about as bad as his record has been  
16 on senior issues. And our people are very very concerned that  
17 someone with that kind of philosophy is going to have a  
18 tremendous influence on what may happen to them in the future,  
19 and that working people and seniors are not particularly -- not  
20 particularly areas that are of interest to the Congressman.  
21 This was displayed on a lot of bills that came before the  
22 Congress during his tenure.

23           So, we would like the Committee to just understand  
24 that we are concerned about that. We do think that the position  
25 does have a lot of effect on working people and retirees. For  
26 that reason, we're here today to register our opposition.

27           Thank you.  
28



1 CHAIRMAN ROBERTI: Thank you, Ms. Golden.

2 Is there anyone else in the audience? I guess we're  
3 taking opposition now.

4 Is anyone in the audience in support? Is there  
5 anyone else in opposition?

6 Then, Congressman, you may respond.

7 CONGRESSMAN SHUMWAY: I'm very interested in the  
8 witness regarding the WMBE program. That's exactly the kind of  
9 information that we're desperately seeking. I've asked for her  
10 card, and I've asked my staff to be in touch with her.

11 We will pursue those complaints. That could be very,  
12 very helpful to us in seeing that that program is carried out.

13 With reference to the last witness, however, I would  
14 just remind Members of the Committee that neither this witness  
15 nor Mr. Jones made any reference at all to what I've done during  
16 the last 11 months. And I really think, again, the proof of the  
17 pudding is in what I've done as a Commissioner.

18 I have not been idle. I've been very busy and it's  
19 -- my record is one that I wish that people like this would look  
20 at and realize that I am not the ogre that they would make me  
21 be, looking at some parts of my voting record.

22 Finally, I'd just remind you gentlemen on the  
23 Committee, I have a great deal of kinship with you because I  
24 know what elections are made of, and how difficult it is to be  
25 representative of the people in this state. But if I were as  
26 anti-working people and anti-retirees as I have been painted to  
27 be, there is no way that I would have been elected in the first  
28



1 place, or re-elected for five consecutive terms. I was elected  
2 in each case by a comfortable margin. I had opposition in every  
3 race.

4 The people of my district, and, I think, the people  
5 of California, recognize that what I was doing was a service.  
6 And I was not working to defeat working people or retirees, or  
7 any other element of our citizenry population.

8 CHAIRMAN ROBERTI: Thank you.

9 Senator Petris.

10 SENATOR PETRIS: I think the point is well taken  
11 about concentrating on the past 11 months.

12 I think that your critics do have a point, and that  
13 is, if you have a certain mindset on certain basic issues,  
14 they're not likely to change from one office to another.

15 It's easy to understand why people would be nervous  
16 in reviewing your voting record from one arena on how you would  
17 respond to their concerns in another arena.

18 Which brings me to believe that you have an excellent  
19 point, and we haven't gone into that at all.

20 Mr. Chairman, I have some other questions, which I've  
21 already discussed with Mr. Shumway, so I don't need to bring  
22 them up again, but it seems to me we ought to get an opportunity  
23 to review those 11 months. Now, I haven't seen anything myself.  
24 You probably have something available, maybe Nancy does; maybe  
25 not.

26 CONGRESSMAN SHUMWAY: There are some references in  
27 the statement that I handed out.  
28





1           SENATOR PETRIS: Yes, there are. I looked at that,  
2 but I would like to get a chance to look over --

3           CHAIRMAN ROBERTI: That's far enough.

4           SENATOR PETRIS: -- whether represented by the  
5 Commission or Mr. Shumway himself --

6           CHAIRMAN ROBERTI: Why don't we do this. I hesitate  
7 to take any testimony on Mr. Shumway next week, except maybe to  
8 review the last 11 months of your service on the Commission.  
9 Why don't we do that?

10          We will take testimony regarding --

11          SENATOR PETRIS: My questions are based on current  
12 things, and I have a conflict here, because they relate to my  
13 own district. The Oakland Park and Berkeley Park fire, we  
14 talked about that, and how payment is going to be made on it.  
15 Whether it's going to be made on a mutual aide basis for  
16 undergrounding facilities.

17          The conflict doesn't include my own home, because we  
18 were already undergrounded there, but it does cover part of my  
19 district. And that's the only other part I would ask him about.

20          The City of Oakland and Berkeley both are interested  
21 in what the policy would be.

22          CHAIRMAN ROBERTI: That is discussing current Board  
23 policy.

24          SENATOR PETRIS: Yes.

25          CHAIRMAN ROBERTI: That is in the purview of what we  
26 would ask.

27          Why don't we do this, if you can come back, we'll  
28



1 take you up first.

2 SENATOR BEVERLY: Are we all right time-wise?

3 CHAIRMAN ROBERTI: Yes.

4 SENATOR ROSENTHAL: I'll come back.

5 CHAIRMAN ROBERTI: Senator Rosenthal says he'll come  
6 back next week, or did you want to ask questions now?

7 SENATOR ROSENTHAL: I'll come back.

8 CONGRESSMAN SHUMWAY: Do you want me to address this  
9 undergrounding issue now?

10 CHAIRMAN ROBERTI: Surely, if you want to, yes.

11 CONGRESSMAN SHUMWAY: I would just say, Senator,  
12 after we met the other day, I checked back with the Commission,  
13 and indeed, there is a procedure that we can and intend to  
14 invoke to expedite the consideration of this issue.

15 But as of today, there has not yet been any  
16 application filed, and until that's filed, the matter really  
17 can't begin.

18 Now, I take it that they haven't filed that  
19 application because negotiations are still going on with groups  
20 like DRA and perhaps others that are interested.

21 But until that application is filed, there is no  
22 position that I can represent to you that the Commission will  
23 take, other than the fact that I've discussed it with Dan  
24 Fessler, and we're both committed to give it a very fair and  
25 unbiased treatment in the Commission.

26 SENATOR PETRIS: Well, I appreciate that.

27 We have a representative of the City of Oakland here  
28



1 who has more knowledge on this than I have.

2       The basic question is this: who's going to pay for  
3 the cost of the undergrounding of the utilities, which is being  
4 recommended by everybody, apparently?

5       I understand that the past policy, the current  
6 policy, has been that for new developments, where service is  
7 extended, the cost of that is shared on a mutual aide basis by  
8 people in the given areas. For my city, it would be all of  
9 Northern California, apparently. So, the people who are  
10 directly affected by this have been paying as part of their  
11 utility bill, a portion of which goes into paying for the  
12 extended service of the utility.

13       And the question is, well, is that also going to  
14 apply to the undergrounding? It may turn on whether that's  
15 considered a new development or an old one. I understand if  
16 it's an old one, it doesn't apply. Well, that's a good  
17 question.

18       If you look at the area, it looks like a war zone.  
19 There aren't any houses standing, so I suppose you call it a new  
20 one. And if you're one of the owners, you'll say, "No, it's not  
21 a new one. I'm just trying to replace what was there."

22       So, there's going to be a tussle there between  
23 compelling the city to foot the entire bill, or part of it,  
24 which they're willing to do. In the case of Oakland, they're  
25 offering seven-and-a-half million for the cost. The total's  
26 probably around forty million, current estimate.

27       I'd like to get an idea of what you think the  
28





1 Commission would do. Of course, I'd like to get your help on  
2 it, too. See what your appraisal of it is. Maybe we'll have  
3 more information at the next meeting.

4 CONGRESSMAN SHUMWAY: I can't really tell you what I  
5 will do, Senator.

6 SENATOR PETRIS: I know. I'm not asking for that  
7 today.

8 CONGRESSMAN SHUMWAY: I will look very carefully at  
9 that application. I know -- I've just heard, like, talk in the  
10 hall that there are different ideas about what we might do.  
11 It's not as though there was one choice available, and all or  
12 nothing.

13 I think that with that fertile a field to play around  
14 in, we can come up with some kind of accommodation that would be  
15 suitable to the City, suitable with the utility, and also the  
16 rate payers of California.

17 SENATOR PETRIS: That's what I'm trying to explore.  
18 Thank you.

19 CHAIRMAN ROBERTI: Why don't we put the Shumway  
20 appointment over until the first thing of the appointments next  
21 Wednesday.

22 CONGRESSMAN SHUMWAY: At 1:30?

23 CHAIRMAN ROBERTI: Yes.

24 SENATOR MELLO: Mr. Chairman, on that point, I was  
25 talking to Nancy Michel, and I wonder whether or not this voting  
26 information could be made available?

27 CONGRESSMAN SHUMWAY: I can make that available  
28



1 tomorrow, Senator. I have those records. It's simply a matter  
2 of photocopying them and getting them here to you.

3 SENATOR MELLO: Are those the official records?

4 CONGRESSMAN SHUMWAY: They're the filings of the  
5 Federal Elections Commission.

6 SENATOR MELLO: I think we're talking about the  
7 voting record.

8 CONGRESSMAN SHUMWAY: Oh, voting record. The last 11  
9 months?

10 SENATOR MELLO: Yes, the last 11 months.

11 CONGRESSMAN SHUMWAY: I'm not sure what I should put  
12 into that. I could give you a very extensive list of decisions  
13 I participated in.

14 I think that I will probably prepare a narrative that  
15 would describe some of the votes that I've done, and then you  
16 can question me on that.

17 CHAIRMAN ROBERTI: And anyone who might be in  
18 opposition is on notice now to come forward and have whatever  
19 information they can give us.

20 SENATOR MELLO: Mr. Chairman, I'm not questioning  
21 whether or not his narrative would be objective or not.

22 I really think that I personally would like to see an  
23 official recordation.

24 CHAIRMAN ROBERTI: We'll try to get that.

25 CONGRESSMAN SHUMWAY: I can send copies of the  
26 decisions, if you'd like them.

27 CHAIRMAN ROBERTI: Nancy will work with Congressman  
28



1 Shumway and come up with a proper, objective list.

2 Senator Craven.

3 SENATOR CRAVEN: I understand what Senator Mello is  
4 asking for, and I don't know whether our Congressman Shumway can  
5 get that together from the staff of the PUC.

6 But if there's anything of great significance to any  
7 party on either side, they'll have that information in hand. He  
8 won't have to go looking for it. If it's not there, it says  
9 something clearly to me. And if it is, then that's a point of  
10 debate.

11 Would you agree, Congressman?

12 CONGRESSMAN SHUMWAY: I agree.

13 CHAIRMAN ROBERTI: Thank you very much.

14 We still have a few items, including Mr. Robert B.  
15 Murphy, Member of the Youthful Offender Parole Board.

16 Thank you for waiting us out, Mr. Murphy. Let's ask  
17 you why you feel you're qualified to assume this position?

18 MR. MURPHY: Yes, Mr. Chairman and Members of the  
19 Committee.

20 I bring you many years of relevant experience and  
21 training, and life experiences which have stood me in great  
22 stead for the last five years and three months as a member of  
23 the Board.

24 I've enjoyed the work and am very good at it, and  
25 will very much appreciate you confirming my ability to continue  
26 that service.

27 CHAIRMAN ROBERTI: Thank you very much, Mr. Murphy.  
28





1 Are there any questions of Mr. Murphy?

2 I guess I have one question on overcrowding in our  
3 institutions. Do you have a program at the Youthful Offender  
4 Parole Board as well as at the Youth Authority to come up with  
5 recommendations on overcrowding? Does that affect your  
6 decisions?

7 MR. MURPHY: I cannot speak for the Youth Authority,  
8 but I can tell you that the Board and the Youth Authority have  
9 been cooperating since at least 1987, to my knowledge, in  
10 attempting to control the population, improve overcrowding. And  
11 overcrowding is at its lowest point now that it's been since  
12 about 1986.

13 Progress has been and is being made.

14 CHAIRMAN ROBERTI: Are there any other questions?

15 SENATOR CRAVEN: Move.

16 CHAIRMAN ROBERTI: Senator Craven Moves confirmation  
17 be recommended to the Floor.

18 Secretary will call the roll.

19 SECRETARY WEBB: Senator Beverly.

20 SENATOR BEVERLY: Aye.

21 SECRETARY WEBB: Senator Mello.

22 SENATOR MELLO: Aye.

23 SECRETARY WEBB: Senator Petris.

24 SENATOR PETRIS: Aye.

25 SECRETARY WEBB: Senator Craven.

26 SENATOR CRAVEN: Aye.

27 SECRETARY WEBB: Senator Roberti.  
28



1 CHAIRMAN ROBERTI: Aye.

2 The vote is five to zero; confirmation is recommended  
3 to the Floor.

4 [Thereupon this portion of the  
5 Senate Rules Committee hearing  
6 was terminated at approximately  
7 4:00 P.M.]

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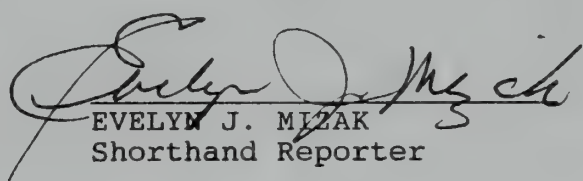
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APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR HENRY MELLO

MEMBERS ABSENT

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

SALLY A. RAKOW, Member  
State Energy Resources Conservation and  
Development Commission

SENATOR HERSCHEL ROSENTHAL, Chair  
Senate Committee on Energy and Public Utilities



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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: As it pertains to the appointments of Norman Shumway, Daniel Fessler and James Nielsen, Senator Beverly is not going to be here today. He has a bad case of the flu.

I just think that because of the importance of these commissions, and because of the votes, a full house is necessary.

So, the best I can do, I know people have come to testify, but the best I can do is to put all three over until next Wednesday, when I expect Senator Beverly will be well. We just checked with him a few minutes ago, and there's just no way he can get here.

So we will put over Shumway, Fessler and Nielsen until next Wednesday.

The testimony on Norman Shumway and Daniel Fessler will be limited -- we really did have that testimony last week -- limited to those questions we did ask regarding the voting record. Oh, we didn't take any testimony on Fessler, only on Shumway.

On Mr. Shumway, we will take only testimony as regards -- I think we asked him about his voting record on the PUC. There may be some questions, but I'm going to try to limit it because we have had testimony.

Mr. Fessler, we will take you up next week as well.

My putting it over is not an indication of either the





1 vote being overwhelming, or losing, or close, or whatever; just  
2 that these appointments are extremely important, and I think  
3 they should be heard by the full Committee.

4 We will have full testimony on former Senator  
5 Nielsen's appointment to the ALRB, and I expect we will have a  
6 full house next Wednesday.

7 I'm sorry.

8 CONGRESSMAN SHUMWAY: Will the sequence remain the  
9 same?

10 CHAIRMAN ROBERTI: That's right; I promised you that.  
11 I said, "top of the list." I didn't say what week, though.

12 [Laughter.]

13 CHAIRMAN ROBERTI: Senator Rosenthal is here to  
14 introduce Sally Rakow, Member of the Energy Resources  
15 Conservation and Development Commission. Excuse me, Senator  
16 Rosenthal is on the panel.

17 Ms. Rakow, we will ask you what we ask all the  
18 Governor's appointees, and that is why you feel you're qualified  
19 to assume this position?

20 MS. RAKOW: Thank you, Mr. Chairman, Senators.

21 Excuse my laryngitis.

22 I'm honored that my appointment by Governor Wilson to  
23 serve as the public member on the Energy Commission has brought  
24 me here today. In preparation for my appearance before you, I  
25 thought back over my past activities and concluded that, quote,  
26 "the public member slot" on the Commission was really a perfect  
27 casting for me and a very apt description of my past roles.  
28



1 I have spent a great deal of a great part of my life  
2 either as a volunteer or professionally in some capacity that  
3 serves the public, ranging from service on local and state  
4 education committees, to serving eight years as an elected  
5 official on a school board, and recent as the California State  
6 Director or then Senator Pete Wilson.

7 As State Director, I was directly responsible for  
8 representing a member of the United States Senate from one end  
9 of the state to the other. I took my representation  
10 responsibilities very seriously, and I aggressively promoted an  
11 open door policy for all constituencies in our five state  
12 offices.

13 With this background of daily working with the  
14 public, I feel very comfortable in the public member position  
15 and well qualified. Somewhat immodestly, I am pleased and proud  
16 of the diversity of interests represented by those who have  
17 chosen to support my confirmation.

18 My statewide responsibilities brought me into direct  
19 contact and working relationship with many of the leaders and  
20 groups who actively participate in the energy debate. It became  
21 apparent to me that energy is truly the life-blood of our  
22 economy. The energy industry competes with agriculture and  
23 tourism as California's largest industry. In the late 1980s,  
24 this was something like \$75 billion per year.

25 The supply of energy, its real cost, and how we put  
26 it to use affects every citizen in California. In the 1980s, I  
27 was involved with Senator Wilson's work on the offshore oil and  
28



1 clean air issues. These debates indicated that very significant  
2 changes have to take place in the future with a greater emphasis  
3 on energy conservation, changes in energy technology, cost  
4 effective energy efficiency, and energy diversity.

5 At the Commission, I'm particularly intrigued with  
6 the new technical advances coming along, ranging from the  
7 advanced technology and renewable resources to alternative and  
8 clean fuels and the newer type vehicles that use these fuels.  
9 It's a very happy and rare coincidence when good energy policy  
10 and good environmental policy come together in dealing with  
11 clean air, energy diversity, and alternative and clean fuels.

12 In my immersion into the energy issues in the last  
13 ten months, I've spent time on fact finding visits. These site  
14 visits have included wind, solar and geothermal plants, as well  
15 as visiting projects of all the major utilities. I have also  
16 attended conferences on a wide variety of subject areas, from  
17 telecommunications to global warming. I almost view these ten  
18 months as scratching the surface, and one of the aspects that  
19 I've really become aware of most is the utter complexity and the  
20 interrelationship of the energy issues facing California.

21 In conclusion, I want to assure you that I'm acutely  
22 aware of my responsibility as the public member to continue to  
23 reach out to every interest and, hopefully, to serve with  
24 integrity, fairness, and an open door.

25 I thank you very much for your consideration.

26 CHAIRMAN ROBERTI: Thank you, Ms. Rakow.

27 Are there any questions?  
28





1           One concern has been that the PUC and the Energy  
2 Commission have to coordinate like areas. What programs or  
3 agenda do you have with the PUC to start doing this?

4           MS. RAKOW: Presently, yes.

5           A month ago I would have answered you a bit  
6 differently, Senator, than I will today, because it is my  
7 understanding that both Mr. Fessler and Chairman Imbrecht have  
8 come to an agreement where they will be having informal meetings  
9 with one other commissioner present, according to law, over the  
10 next year to try to sort out some of these so-called turf  
11 problems, which I think in reality exist.

12           And I think that the administration and the joint --  
13 Senator Rosenthal's Joint Committee have said, "Why don't you  
14 take a year to see what can be done before any legislative  
15 action?"

16           CHAIRMAN ROBERTI: Very good.

17           Senator Rosenthal.

18           SENATOR ROSENTHAL: Right.

19           I have three issues I'd like to just go over with  
20 you.

21           I'm very interested in the manner in which the  
22 administration intends to work with the Legislature on  
23 energy-related bills. And as you know, there have been a number  
24 of Joint Committee bills which are consistent with the proposals  
25 of the Governor's energy policy.

26           So, as a member of the legislative committee, and as  
27 someone who's been close to the Governor, how do you view your  
28



1 role regarding the administration's consideration of those bills  
2 which are in the hopper and which seem to be moving in the same  
3 direction as his energy policy?

4 MS. RAKOW: Well, certainly the bills that the Energy  
5 Commission takes an official position on, I would do everything  
6 possible to bring them to the administration's attention and,  
7 hopefully, favorable action, which would be contacting members  
8 of the Governor's administration that I personally know.

9 I think the word is "lobby".

10 SENATOR ROSENTHAL: It's my understanding that you  
11 serve on the committee that deals with energy conservation  
12 programs --

13 MS. RAKOW: Yes.

14 SENATOR ROSENTHAL: -- and building and appliance  
15 efficiency standards, which you've indicated.

16 What energy conservation goals would you like to see  
17 achieved in California?

18 MS. RAKOW: Generally, on these two committees?

19 SENATOR ROSENTHAL: Yes.

20 MS. RAKOW: The Conservation Committee, through a  
21 variety of programs, is -- through local -- giving loans and  
22 grants to local government entities -- cities, counties,  
23 hospitals, school districts, special districts -- they are  
24 usually six back -- six-year payback loans.

25 The projections for each of these loans is that they  
26 will achieve great energy savings in the actual monies that this  
27 public entity has to spend. One of the very practical things is  
28



1 that this money that these school districts and local government  
2 entities save can go to more essential services, public  
3 services. Money being very tight right now, anything saved has  
4 a direct effect on other services. That is just a pure  
5 financial aspect.

6 But saving in energy consumption then also means that  
7 we achieve more energy security. We reduce emissions into the  
8 air. We achieve cleaner air. There's a whole network, I think,  
9 of results.

10 I would like, in the energy conservation programs --  
11 and we have started this, I believe -- to see a more complete  
12 data system in effect to actually be very specific as to how  
13 much energy the City of Oxnard, for instance, could save, so  
14 that we can do a better marketing job, because I think that  
15 needs to be marketed.

16 I don't know whether that answers it.

17 In the building standards program, the amount of  
18 energy that -- the National Resources Defense Council estimated  
19 that the amount of energy saved by our 1991 residential and non-  
20 residential building standards equaled one-fifth of all of the  
21 natural oil and gas on federal lands off Central and Northern  
22 California. Now, that's very extensive.

23 My goal would be to increase all these programs as is  
24 practical.

25 SENATOR ROSENTHAL: I like the concept of making  
26 available statistics to local governments of what they can save  
27 by the energy conservation and standards programs, so I look  
28





1 forward to your activities in that regard.

2 MS. RAKOW: Thank you.

3 SENATOR ROSENTHAL: Finally, as the public member,  
4 when I think of that position, I think of the public  
5 participation in the intervenor program.

6 What is your role on the Energy Commission -- what is  
7 your view of the Public Advisor's Office and the intervenor  
8 program regarding the promotion of public participation in the  
9 Commission proceedings?

10 MS. RAKOW: I think it's a very, very important  
11 aspect of our proceedings.

12 I feel, even though I've been involved in bureaucracy  
13 for a number of years, I feel that the individual needs  
14 assistance in getting their positions known to any agency,  
15 including such a wonderful agency as the Energy Commission, and  
16 the intervenor program certainly does this.

17 It is a program designed to give reasonable funds to  
18 finance those individuals, groups, organizations that show some  
19 financial need in order to bring the Commission information that  
20 they otherwise would not be -- have. And these people  
21 participate in workshops, in seminars, in our actual hearings.

22 The program itself right now, our new Public Advisor  
23 is reviewing the program to see if she can make -- come up with  
24 suggestions and ideas to bring to the Commission to make it more  
25 user-friendly, so that there won't be quite so much paper work  
26 and, perhaps, payments made in a more timely manner to the  
27 people.  
28



1           My first knowledge of the program was very early on  
2 in my first public meeting, or second meeting, at the time of  
3 the drought. And since I live in Marin County and survived on  
4 50 gallons of water a day, this wonderful man from Santa Clara  
5 brought a shower head to the Commission. We were adopting  
6 building standards, I guess it was. And the shower head made  
7 noises and automatically closed, shut off, if you were in the  
8 shower for more than a minute.

9           Well, you know, he had a whole video, and description  
10 of how it worked, and I was very interested. I would have liked  
11 one, because, you know, I was collecting water in buckets at the  
12 time, taking my showers.

13           So, that kind of thing -- so we did -- although we  
14 didn't take it in our building standards, because he was there,  
15 because he had received assistance in putting this whole  
16 projection together, we were able to put -- give him some help  
17 in another department from the Energy Commission.

18           So, you know, from big things to lighting on hotel  
19 and motel grounds, and what's needed there, to the little  
20 individual, I think the program helps.

21           SENATOR ROSENTHAL: Mr. Chairman, Members, I'm  
22 satisfied.

23           I have on the record where I knew she was because  
24 I've spoken to her previously, but I wanted to get it on the  
25 public record.

26           I have no further questions.

27           CHAIRMAN ROBERTI: Thank you very much, Senator  
28



1 Rosenthal.

2 SENATOR MELLO: Mr. Chairman.

3 CHAIRMAN ROBERTI: Senator Mello.

4 SENATOR MELLO: I see in our analysis here that you  
5 served as the Finance Director for Pete Wilson on his campaign  
6 for Governor?

7 MS. RAKOW: Yes, both as the 1981-82 campaign for  
8 United States Senator, and then I went on to the Senate staff.  
9 I left the Senate staff early in 1988 to go back on to the  
10 campaign for re-election for the United States Senate, and then  
11 on to the Governor's campaign.

12 SENATOR MELLO: I notice he spent some \$24 million,  
13 or whatever it is. I think all these campaigns are too  
14 expensive.

15 How much of that money do you feel you're responsible  
16 for raising?

17 MS. RAKOW: Oh, that's very difficult to say.

18 SENATOR MELLO: Well, just approximately.

19 MS. RAKOW: I don't know. We had finance consultants  
20 throughout the state who did the actual -- most of the actual  
21 fundraising. I did a great deal of the planning. Some of the  
22 major associations, political action committees, groups, I did  
23 the planning of their approach.

24 I honestly can't give a figure because I would have  
25 those four consultants call me up and say, "Hey, we did thus and  
26 thus."

27 SENATOR MELLO: You were the overall Finance  
28





1 Director?

2 MS. RAKOW: I was the overall Finance Director in  
3 1982. I was the Finance -- what did we call it? Titles, we  
4 changed titles a lot. I think it was called Finance -- gosh, I  
5 should remember it; was it Coordinator?

6 But I was very involved in the finance, Senator.

7 SENATOR MELLO: I know this job pays \$92,000 a year.  
8 Do you feel in any way this is some kind of reward for your past  
9 efforts --

10 MS. RAKOW: No. It's a decrease in salary, frankly.

11 SENATOR MELLO: It's what?

12 MS. RAKOW: It's a decrease in salary.

13 SENATOR MELLO: But I mean, do you feel this is some  
14 kind of reward that you're getting for your past years of  
15 service to him?

16 MS. RAKOW: I don't -- I don't think so. I mean, I  
17 think -- I would hope that the Governor knew the kind of  
18 responsibilities I had undertaken and the way I approach jobs.  
19 And I believe that I don't think the Governor hands out rewards.

20 SENATOR MELLO: Okay, thank you.

21 CHAIRMAN ROBERTI: Are there any other questions?

22 Is there any opposition in the audience?

23 SENATOR CRAVEN: Move Ms. Rakow.

24 CHAIRMAN ROBERTI: Senator Craven moves Ms. Rakow's  
25 confirmation be recommended to the Floor.

26 Secretary will call the roll.

27 SECRETARY WEBB: Senator Beverly. Senator Mello.  
28



1 SENATOR MELLO: Aye,

2 SECRETARY WEBB: Senator Petris. Senator Craven.

3 SENATOR CRAVEN: Aye.

4 SECRETARY WEBB: Senator Roberti.

5 CHAIRMAN ROBERTI: Aye.

6 The vote is three to zero; confirmation is  
7 recommended to the Floor.

8 MS. RAKOW: Thank you very much, Senators.

9 [Thereupon this portion of the  
10 Senate Rules Committee hearing  
11 was terminated at approximately  
12 2:10 P.M.]

13 --oo0oo--  
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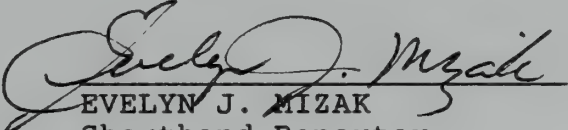
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of January, 1992.

  
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CALIFORNIA STATE SENATE

RULES COMMITTEE

CONFIRMATION HEARINGS

OF

DANIEL FESSLER

AND

FRANK S. ZOLIN

ORIGINAL

STATE CAPITOL

Room 113

Sacramento, California

WEDNESDAY, JANUARY 29, 1992

1:30 P.M.

Ronald J. Peters  
Certified Shorthand Reporter  
License Number 2780





SENATE RULES COMMITTEE MEMBERS PRESENT

Senator David Roberti, Chairman

Senator William Craven, Vice Chairman

Senator Robert Beverly

Senator Henry Mello

Senator Nicholas Petris

ALSO PRESENT

Senator Charles Calderon

Senator Quentin Kopp

Senator Herschel Rosenthal

Senator Bill Lockyer

Mr. Rick Rollens, Secretary of the Senate

Ms. Nancy Michel, Consultant to the Rules Committee

Ms. Patricia Webb, Secretary to the Rules Committee



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PROCEEDINGS

SENATOR CALDERON: Mr. President, Members, thank you for the opportunity --

VICE CHAIRMAN CRAVEN: Thank you, Senator.

SENATOR CALDERON: -- to introduce someone who I know quite well and someone who has been a very significant player in my life. He is my professor from law school.

I will tell you that my performance as a lawyer should not reflect poorly on him.

(Laughter.)

VICE CHAIRMAN CRAVEN: Your performance as a lawyer reflects very aptly upon him.

SENATOR CALDERON: But it is he who, as a teacher, not only affects my life, but the lives of many other students that have graduated from Davis Law School.

I can tell you that he is first and foremost a teacher, and he will always be a teacher. Even to the point where one of his first political moves on the Commission was to make sure that they hired as many Davis first year students as they could at the lowest possible price to give them some practical experience in the area of public policy making.

I'm particularly honored to be here today to introduce him. It is totally like Dan to ask a student of his to introduce him.





1           You won't find a long line of interested groups  
2   that are concerned with the activity of the Public Utilities  
3   Commission. You won't find a long line of political  
4   individuals. If anything, you will find those students who  
5   he has taught in the past and contributed up here supporting  
6   him, and those students who he has given something to and  
7   that who have taken that along with them and it has served  
8   well in their lives.

9           I hope that you give him your careful  
10   consideration. I hope that you advise and consent on this  
11   nomination. And I can tell you that he's here not because  
12   of a political appointment, he's here because the Governor  
13   read his book. And I think that recommends him highly to  
14   this Committee.

15           VICE CHAIRMAN CRAVEN: Very good.

16           SENATOR CALDERON: Thank you.

17           VICE CHAIRMAN CRAVEN: Very well.

18           Let's begin with Daniel W. Fessler, Member, Public  
19   Utilities Commission.

20           Mr. Fessler, welcome back. You're getting to be  
21   an old friend. You've been here now three times I think,  
22   haven't you?

23           MR. FESSLER: That is true, Senator.

24           VICE CHAIRMAN CRAVEN: Yes. Well, we're delighted  
25   to have you with us today.



1           We ask each of the nominees to tell us why they  
2 feel they are qualified for the appointment under  
3 consideration.

4           MR. FESSLER: Senator Roberti, Senator Craven,  
5 Senator Mello, Senator Petris, I heard the question that the  
6 Committee is interested in raised two weeks ago, and I  
7 therefore have had two weeks to reflect on the issue.

8           Ultimately, of course, whether I am qualified for  
9 this position or not is a matter for the Senate to decide.  
10 I would simply ask that you make the decision predicated on  
11 my record of service to date and lending such weight as you  
12 deem appropriate to the following thoughts.

13           I believe that whatever contribution I may make to  
14 the labors of the Public Utilities Commission will be  
15 heavily influenced by the following aspects of my  
16 background. And since I was plucked from, not relative, but  
17 absolute obscurity to be here, it might be helpful if I  
18 sketched a couple of factors that you may wish to know about  
19 me.

20           There are two that I think important, at least in  
21 reflecting on what I have done or failed to do in the past  
22 11 months. They are my experiences of nearly a quarter of a  
23 century ago as a minor laborer in the civil rights movement  
24 and the quarter century of service that I've had as a school  
25 teacher at the University of California, where I've been on



1 the faculty of the Law School at Davis since 1970 teaching  
2 contracts, business organizations, securities regulation and  
3 legal history. And with the Chair's permission, I would  
4 like to briefly elaborate on those points.

5 VICE CHAIRMAN CRAVEN: Please do.

6 MR. FESSLER: My limited contribution to the civil  
7 rights movement began in the late 1960's and continued  
8 through the early 1970's, and it came in two distinct  
9 phases.

10 The first arose during my second year in law  
11 school when I worked as a volunteer assisting recipients of  
12 public assistance in dealing with administrative agencies in  
13 the District of Columbia. Ultimately, I wrote a student  
14 piece in the law review which questioned the conventional  
15 wisdom that due process rights attach only to "property"  
16 interests.

17 The position of the government of the District of  
18 Columbia at that time was that since welfare benefits were  
19 deemed a form of government largess or bounty, there was no  
20 constitutional mandate that due process be observed. That  
21 did not then seem right.

22 Five years out of law school I was back in the  
23 District of Columbia participating as an amicus counsel in  
24 deliberations and arguments before the Supreme Court of the  
25 United States in Kelly versus Goldberg. Ultimately, Kelly





1 versus Goldberg was decided in favor of a position which  
2 many of us had advocated, that due process rights attach to  
3 the persons as citizens, not to the nature of the interest  
4 that is being affected.

5 About the time the Court was handing down Kelly  
6 and Goldberg, I began to take an interest in the provision  
7 of government services at the municipal level, and I was  
8 asked to assist the NAACP Legal Defense Fund which was  
9 examining the conditions of Black Americans in several  
10 southern states. The focus of my labor was the plight of  
11 black residents in two small communities, Shaw and Itta  
12 Bena, Mississippi.

13 The provision of such essentials as water for fire  
14 fighting and domestic consumption, sanitary and storm  
15 sewers, street lighting, curbs, gutters and the like, are to  
16 me the hallmarks of a basic settlement, and yet in those  
17 communities they were provided in one part of the town and  
18 not in another. And the rationale lamentably was the race  
19 of the residents.

20 Later during the course of a fellowship in urban  
21 legal studies at Harvard, I came to realize what should have  
22 been evident to me or to anyone who had been reared in the  
23 small town in Wyoming where I grew up. There was a wrong  
24 side of the tracks in the town that I inhabited, and the  
25 problem was so endemic that it went beyond instances of



1 racial discrimination to become a cliché in our language.

2 To compress into a few moments ideas which took  
3 months to develop and years to document, I came to see the  
4 problem of the mal-distribution of society's infra-structure  
5 as one ill-suited to the judicial process and judge-ordered  
6 solutions. The infra-structure of a society is a political  
7 concern and it emphatically belongs in the stewardship of  
8 elected public officials.

9 Ultimately, I reduced those thoughts to a book  
10 which was co-authored with Charles Haar, who was then and is  
11 now my mentor at Harvard. Then Senator Wilson read and  
12 reviewed that book. He liked the message and years later  
13 sent for the messenger.

14 That is what brings me before you this afternoon.

15 In the eleven months that I have been on the  
16 Public Utilities Commission, I have discovered that my  
17 background as a lawyer, a law teacher, and an individual  
18 interested in problems which are obviously within the  
19 Commission's jurisdiction, really did not adequately prepare  
20 me for the discharge of my current responsibilities, and  
21 therefore I readily confess that this has been the steepest  
22 learning curve that I have ever encountered.

23 I find that much of the thinking that I brought to  
24 the Commission turns out to have been long out of date.

25 While monopolies remain in certain vital areas of the



1 Commission's jurisdiction, throughout the industries and  
2 services regulated by the Commission, there is a current  
3 emphasis upon the potential of competition as a means of  
4 enhancing delivery and driving down costs to consumers.  
5 Most evident in the field of telecommunications, it is also  
6 present in such fundamental areas as energy generation and  
7 transportation.

8           How does one guard the public interest in such a  
9 setting? It seems to me that the historical  
10 responsibilities of the Commission are expanding. Where  
11 classic monopolies remain, our task is to provide the type  
12 of discipline which we would otherwise expect from the  
13 forces of competition. If competition has entered the  
14 field, our task is to ensure a level playing field and to  
15 review the contractual arrangements with a view toward  
16 protecting the interests of those consumers least likely to  
17 be in a position to protect themselves.

18           That is the second aspect of my background.  
19 Because for these two decades and more, I have been a  
20 contracts teacher at the University of California. I've  
21 also taught the law of business organizations. One cannot  
22 occupy such a privileged position without meeting many men  
23 and women from the business community. I thus believe that  
24 I have both a theoretical and practical understanding of the  
25 stress and strains of a modern contractual relationship.







1 That knowledge should be of utility to the Public Utilities  
2 Commission.

3 The third point that I'd like to make before  
4 closing these brief remarks is that I am very interested in  
5 process. Twenty some odd years ago, in the Supreme Court,  
6 as a much younger human being, I urged the Court that if  
7 government hearing processes did not resemble trials, they  
8 were inherently suspect.

9 Although the majority of the Court ultimately  
10 agreed with the notion that due process rights attach to  
11 welfare benefits, Mr. Justice Brennan, who wrote the  
12 majority opinion, went out of his way to tell me that I was  
13 wrong, "That due process required," to quote the Judge,  
14 "that process which in the circumstances was due." These  
15 many decades later at the Public Utilities Commission the  
16 degree to which I was wrong has become very evident.

17 Too often today, we attempt to juggle all of the  
18 business of the Commission into a trial type proceeding.  
19 The consequences are delay, very heavy legal costs, and  
20 frequently making it difficult for broad-based public  
21 participation. I am in favor of exploring concepts of  
22 alternative dispute resolution, which would never have  
23 occurred to me in the past, and before I came into the  
24 Commission.

25 And so those are the basic qualities or



1 qualifications, such as they are, that I bring to that task.

2 I am also being reviewed today for an appointment  
3 to the Transportation Commission, and for that you all are  
4 primarily responsible, for it is the Legislature that  
5 decided that one of the members of the Public Utilities  
6 Commission must also be a member of the Transportation  
7 Commission. And having been appointed to the one body in  
8 February, I was asked to assume the additional duties of the  
9 other in March.

10 I have found that that is a very exciting and  
11 innovative area of California's present and future. The  
12 leadership that the Legislature displayed in sponsoring  
13 Proposition 108, the enthusiasm of the public in enacting  
14 Proposition 116, have given that Commission very very  
15 significant responsibilities in discharging the distribution  
16 of what are debt funds, funds that will be paid by the  
17 children, grandchildren, and perhaps great-grandchildren of  
18 individuals in this room.

19 I find that and the opportunity to develop  
20 intermodal transportation, particularly rail, to be among  
21 the most challenging aspects of my dual responsibilities,  
22 and so I am prepared to oblige any members of the Committee  
23 in any questions they may ask. I would appreciate a glass  
24 of water if that is available.

25 VICE CHAIRMAN CRAVEN: Well, we can take care of



1 that without any trouble.

2 Fine. Why don't you proceed and they may pick  
3 up -- finish your statement.

4 MR. FESSLER: Senator, such statements as I bring  
5 to mind, I --

6 VICE CHAIRMAN CRAVEN: Very well. Exceedingly  
7 well done.

8 MR. FESSLER: Yes.

9 VICE CHAIRMAN CRAVEN: Would the Committee prefer  
10 to hear from those people in the audience before they ask  
11 their questions?

12 SENATOR MELLO: It's up to the Chairman.

13 VICE CHAIRMAN CRAVEN: Well, let's have someone  
14 come up and speak in support, if there be anybody here, or  
15 in opposition if there are none of the former.

16 Anyone in support?

17 That doesn't bode too well, does it?

18 (Laughter.)

19 VICE CHAIRMAN CRAVEN: How about those in  
20 opposition?

21 Well, you don't hear the pattering feet, so you  
22 must be going quite well.

23 MR. FESLER: Things are even at this point.

24 VICE CHAIRMAN CRAVEN: Let's go to Henry Mello,  
25 and that will probably change things immensely.





1 (Laughter.)

2 SENATOR MELLO: Well, I doubt that, but I think  
3 the reason that there's a lack of testimony, and I kept  
4 hearing when you said "I rose from relative obscurity to  
5 where I am here today," I kept trying to hear where this  
6 obscurity was, and I fail to find it in your record.

7 Let me start out by saying I do plan to support  
8 you today, especially after my understanding that your  
9 contract was under some discussion. The reason we delayed  
10 your confirmation was it was in the press and under some  
11 discussion. At that point I was concerned of the  
12 arrangement that you had made between the Public Utilities  
13 Commission and the University, and I understand now that  
14 this arrangement has been negated and a new arrangement has  
15 been made.

16 Could you just briefly, I don't want to go into a  
17 lot of big details, could you just briefly describe a little  
18 bit about the old contract and what you now have worked out  
19 in order to circumvent this apparent -- well, I don't know  
20 if it was a conflict -- the apparent perception, at least,  
21 that the contract originally in place was not in the best  
22 public interest.

23 MR. FESSLER: I would be happy to, Senator.

24 When Governor Wilson asked me to consider serving  
25 on the Public Utilities Commission, I did what most school



1 teachers do, and that is I ran to the library and got a  
2 book. And I discovered that the Constitution requires that  
3 a public service of this nature is for six years. And I  
4 became very concerned because I realized that I could not  
5 take a six-year leave of absence from the University without  
6 the consent of the Regents.

7 I also recognized that I had a problem in that  
8 having been virtually all of my adult life in the service of  
9 the University, I am in a series of benefits, including a  
10 retirement program, health and death benefits, which are  
11 peculiar to the University and are not shared by the State  
12 government or do not interface with anything in the private  
13 sector. And I was very concerned as to how I might remain  
14 within the protection of both that retirement system and  
15 also those health and death benefits.

16 The Governor's office responded that they would  
17 approach the University and see what might be done. The  
18 University came back with a proposal that I have worked  
19 under for the past 11 months, and that was this, that my  
20 salary as a member of the Public Utilities Commission would  
21 be remitted to the University of California. The University  
22 of California would then pay me the salary which I had  
23 received as a law professor at what is called Step 8 in the  
24 system. It would continue to fund my participation in the  
25 University retirement program and it would also fund the



1 health and other benefits that I have just related to you.

2 A question was raised in the course of the  
3 Committee's examination of my appointment as to whether or  
4 not it was appropriate that that document read that it was a  
5 contract between the University of California, the Public  
6 Utilities Commission, and the Department of Personnel  
7 Administration, in which I was sort of treated like a horse  
8 that you would be loaning out for a number of years with the  
9 responsibility to return me in roughly the same condition at  
10 the end of that time.

11 (Laughter.)

12 MR. FESSLER: The question was did it give sort of  
13 an indecorous notion that I was holding a position created  
14 by the people and the Constitution, and yet it appeared that  
15 I was really holding it at the pleasure of the Regents of  
16 the University.

17 And so what has happened is this. That agreement  
18 is to be rescinded should the Senate advise and consent to  
19 my nomination. I will be paid the salary of a Public  
20 Utilities Commissioner directly from the Public Utilities  
21 Commission as it has always been the case. The University  
22 of California will continue to hold me on a leave status  
23 with the faculty. They will continue to pay me 14 percent  
24 of the salary of a law professor, Step 8, in return for  
25 which I will continue as I have done since I have been







1 appointed, teaching what amounts to about a 30 percent  
2 teaching load.

3 So from the University's perspective, they are  
4 happy because they are getting 30 percent of the work from  
5 me for 14 percent of the salary. They will also keep me in  
6 the retirement system, and there is enough in that 14  
7 percent to, by withholding, pay for my contributions to the  
8 death and other benefits, health benefits. I will receive  
9 no similar benefits from the State with reference to the  
10 Public Utilities Commission.

11 That matter was vetted through Senator Roberti's  
12 office and the president pro tempore pronounced himself  
13 satisfied.

14 SENATOR MELLO: I understand that you're also --

15 VICE CHAIRMAN CRAVEN: Senator Roberti.

16 CHAIRMAN ROBERTI: Yes. And I might interject,  
17 Mr. Chairman, that that is the case. My staff has reviewed  
18 this arrangement and is satisfied with it.

19 MR. FESSLER: Thank you.

20 SENATOR MELLO: Yeah. It was somewhat unclear --

21 MR. FESSLER: Certainly, Senator.

22 SENATOR MELLO: Your salary, I believe, is \$94,000  
23 for the PUC and the professor's salary is quite a bit  
24 higher, so we were --

25 MR. FESSLER: It's \$105,000.



1           SENATOR MELLO: A hundred and five -- well,  
2 \$10,000, so I think the arrangement's fine. You're also  
3 getting health benefits and your sabbatical leave is also  
4 accruing --

5           MR. FESSLER: That is correct. Yes.

6           SENATOR MELLO: So I think it's much better that  
7 way, and I thank Senator Roberti and his staff for  
8 clarifying.

9           So the new contract will be signed by yourself?

10          MR. FESSLER: That is correct, Senator. And it is  
11 -- there actually is no contract now. I mean I simply -- if  
12 you advise and consent to my nomination, I'm on the Public  
13 Utilities Commission. I will sign what is called a letter  
14 of understanding with the Chancellor of the Davis campus to  
15 effectuate all other aspects of the arrangement.

16          SENATOR MELLO: Very good.

17          MR. FESSLER: And I would also like to thank  
18 Senator Roberti because the matter was handled with great  
19 care, and I am grateful to him.

20          SENATOR MELLO: Thank you very much.

21          VICE CHAIRMAN CRAVEN: Very good.

22          Senator Petris.

23          SENATOR PETRIS: I would like to address a couple  
24 of other areas. One is privacy and the big dispute that's  
25 brewing now nationally on the right of a receiver of a



1 telephone call to have the telephone number of the caller  
2 disclosed.

3 MR. FESSLER: Yes.

4 SENATOR PETRIS: I don't know if it's come before  
5 the Commission for California problems, but I'd like to get  
6 your explanation of the issue and what you think is the best  
7 policy.

8 MR. FESSLER: I appreciate it, Senator.

9 I hope not to try the patience of any member when  
10 I say that the issue of caller ID is indeed before the  
11 Public Utilities Commission. I believe it was on Friday of  
12 last week that the administrative law judge released his  
13 proposed decision on that matter. The thrust of the  
14 proposed decision is to refuse permission for the  
15 implementation of caller ID in California.

16 Now, under our system, that proposed decision now  
17 comes before the five members of the Public Utilities  
18 Commission. I obviously, therefore, am at some point in the  
19 near term, probably the next 100 days, going to be called  
20 upon to vote on that matter. I have not read the briefs of  
21 all of the parties who have participated, nor have I  
22 reviewed the record. And so I would ask your indulgence in  
23 withholding any sentiment as to my attitude toward caller ID  
24 until I have the benefit of going through that process.

25 I place a high personal value on the right of





1 privacy. I certainly can say that.

2 SENATOR PETRIS: I thought you might tell us what  
3 the arguments are, pros and cons, without your own opinion  
4 being offered.

5 MR. FESSLER: Certainly. I can outline them as I  
6 understand. The basic argument is that a device on the  
7 telephone that enables you as the telephone subscriber to  
8 see displayed before you the number of the caller who is  
9 attempting to reach you, puts you on a level playing field  
10 with that individual. After all, he knows that he dialed  
11 the Petris home. Should you know that Dan Fessler is  
12 calling? The strongest argument in favor of it is that it  
13 gives you an opportunity before you subject yourself to the  
14 resulting conversation, to know the identity of the person  
15 who's making the call.

16 SENATOR PETRIS: Well, would that have a phone  
17 number and a name?

18 MR. FESSLER: No.

19 SENATOR PETRIS: Just a phone number.

20 MR. FESSLER: You would have to recognize my  
21 number or recognize that you didn't recognize it, and  
22 perhaps you didn't wish to be bothered. So my name would  
23 not be displayed, but the telephone number would.

24 Now, those individuals who are in favor of caller  
25 ID argue that privacy -- I have chosen to invade your



1 privacy by ringing your number, and you ought to have a  
2 correlative right to be aware of my identity if you  
3 recognize the number. Or, as I've stated to you, there are  
4 arguments, however, on the other side.

5           The arguments on the other side that I have heard  
6 most emphatically in just general reading that I have done  
7 are that, particularly in the context of my calling, let us  
8 say, to order something from a catalogue, that my telephone  
9 number will have a commercial value, and that somehow the  
10 fact that I even made an inquiry could be something that  
11 could be recorded by the telephone carrier, and the fact  
12 that I called Land's End might indicate that I was  
13 interested in receiving commercial contacts with respect to  
14 the sale of clothing. That's one argument.

15           And it's not fanciful in the sense that if you've  
16 had the experience sending in for something, all of a sudden  
17 you get 75 catalogues and you wonder how that happened.  
18 Well, it was because there was a commercial value in the  
19 identification that you were interested in purchasing  
20 whatever that might be.

21           Now, a more serious argument, and that is not a  
22 trivial one, I mean that we would get more of these  
23 solicitations that generally come at the dinner hour trying  
24 to sell you something, the more serious one is that prefixes  
25 frequently denote neighborhoods, and that merchants could



1 use this information to discriminate against poor people by  
2 noting that there are three calls lighting up on the  
3 machine, two of which seem to come from relatively affluent  
4 areas, by the prefix, one of which comes from a non-affluent  
5 area, and the merchant will opt to accept the first two  
6 calls and perhaps not even pick up on the third.

7 That is a matter that I know troubled the Maryland  
8 Commission. I did read about four months ago the decision  
9 that the Maryland Commission made, which was to first enable  
10 caller ID, and then seven months later, they changed their  
11 mind and put restrictions on it.

12 There's a blocking feature which is a partial  
13 solution to this, and that is to give the consumer the  
14 ability to block on a per call basis the fact that his or  
15 her number would be displayed. Then the issue is, well,  
16 there is a cost factor. Should the consumer have to bear  
17 this cost, or should it be somehow passed on to all  
18 telephone rate payers, or should the consumer be given a  
19 one-time option to have his or her number blocked  
20 automatically so that you wouldn't have to dial in a  
21 specific code in order to implement the blocking?

22 These are the types of issues that are before us.  
23 We live in an era increasingly dependent upon information,  
24 and yet information at times can be obnoxious.

25 (Laughter.)







1           SENATOR PETRIS: Well, we know that. We get a lot  
2 of crank calls in our field, so --

3           MR. FESSLER: Yes.

4           SENATOR PETRIS: Are there any states that have  
5 permitted this?

6           MR. FESSLER: New Jersey is the most prominent  
7 state that has permitted it and is having an absolutely free  
8 experiment with it, meaning that they place -- you can do  
9 per call blocking in New Jersey, but that's the only  
10 limitation on it.

11          SENATOR PETRIS: Is that the only state so far?

12          MR. FESSLER: No. I'm fairly confident, Senator,  
13 it's not the only state, but it is the one state that I am  
14 confident has enacted the proposal which our administrative  
15 law judge just recommended that we not enact.

16          SENATOR PETRIS: Now, there was a recent decision  
17 at the U.S. Supreme Court level leaving intact an appellate  
18 court decision regarding some of the 900 numbers.

19          MR. FESSLER: Yes.

20          SENATOR PETRIS: Did our state participate in that  
21 in any way? Did the Commission express an opinion or file a  
22 brief on one side or the other?

23          MR. FESSLER: The Commission did not file a  
24 submission in that case at all, Senator. And as a general  
25 rule, unless the matter is coming up on a case that is being



1 appealed from decisions that we have participated in, we do  
2 not have a practice of filing amicus pleadings in  
3 litigation.

4 SENATOR PETRIS: Is jurisdiction over cable one of  
5 the issues coming before you?

6 MR. FESSLER: Well, it is not an issue coming  
7 before us in the sense that it would require action by the  
8 Legislature to confer that jurisdiction over us or over  
9 cable under the Commission. There are certainly individuals  
10 of great vigor who have come to see me on both sides of this  
11 issue.

12 On Monday of this week, and I guess it's okay for  
13 a public servant to have a favorite citizen, Sylvia Siegel  
14 came to see me. And she has a very decided view on this  
15 matter, and she would like us to be regulating cable TV. I  
16 told her to come and see you all.

17 (Laughter.)

18 SENATOR PETRIS: Thank you.

19 Anybody want to block calls?

20 (Laughter.)

21 SENATOR PETRIS: This issue's been litigated at  
22 the national level, and I wondered if there's a possibility  
23 of a U.S. Supreme Court decision binding all the states one  
24 way or the other?

25 MR. FESSLER: It could happen. It could happen



1 / that --

2           SENATOR PETRIS: It's been a big fight for many  
3 years.

4           MR. FESSLER: -- that the case would be made that  
5 any state intrusion into this area would be an untoward  
6 burden on interstate commerce.

7           Again, just reviewing my basic understanding so  
8 that you have some notion of the degree to which you would  
9 want to repose any confidence in me, I mean the basic  
10 argument in favor of regulation, whether it be by the Public  
11 Utilities Commission or by some other entity created by the  
12 Legislature, is that in virtually every community in  
13 California, the local cable service is a monopoly. It is  
14 the only game in town. And the fact is that many people  
15 complain about not only the quality of the service they're  
16 receiving, but also the cost.

17           And there is a further dimension that I think has  
18 yet to be discussed, and that is that the cable television  
19 and the potential for it to become interactive with the  
20 viewer as a means of communicating information is part of  
21 the revolution which is overtaking all of us. Other  
22 countries, European countries, the Japanese, have tended to  
23 look at this all as a rather seamless web with national  
24 policies, and we have not.

25           And the issue is will we go forward as 51





1 jurisdictions, will we not go forward at all, or will we let  
2 this matter lie at the even more Balkanized level where it  
3 is at the present time, which is that it is within the  
4 jurisdiction of individual municipalities.

5 And so these are the goodly and necessary reasons  
6 that you all are here.

7 SENATOR PETRIS: If the issue comes up in the  
8 Legislature, let's say, in the form of a bill or a  
9 resolution, would the Commission assist us by offering your  
10 knowledge and recommendations, or --

11 MR. FESSLER: I, of course, am only one of five  
12 commissioners. I cannot bind my colleagues, but I feel that  
13 I -- and there is a vacancy on the Commission at the present  
14 time, but I feel fairly confident and I can certainly pledge  
15 you that it would be my position to render every assistance  
16 that I could, and I would be confident that my colleagues  
17 would be of a similar view.

18 SENATOR PETRIS: What was it in your book,  
19 Wrong Side of the Tracks -- is that the name of it?

20 MR. FESSLER: It is. Yes. It was also  
21 published -- it was iterated in a paperback version in which  
22 it was called Fairness and Justice. It's the same book.

23 SENATOR PETRIS: What was it in that book that  
24 attracted the Governor's attention?

25 MR. FESSLER: I think there were two things.



1 First, here was an individual who'd been identified with  
2 litigating these issues, who was now saying that litigation  
3 was not an answer, that attempting to get a federal judge to  
4 render a decision to a terrible problem, but then put it in  
5 sort of the concrete context of a Constitutional decision,  
6 was to impose upon local governments financial burdens,  
7 which the judge is not the source of the revenues that are  
8 needed. It also was to bypass the process of keeping these  
9 absolutely community-based questions before communities.

10 So I was arguing that the Constitution of the  
11 United States, in the final analysis, should always come to  
12 play when you have something like the specter of racial  
13 discrimination. But when you looked to see that, if you  
14 looked at the small town that I grew up in in Wyoming, there  
15 were no racial or ethnic minorities, but there were poor  
16 people. And they lived on the other side of the South  
17 Platte River, and they didn't have municipal services to  
18 speak of at all.

19 And so if the problem is one that you would either  
20 have to stretch the Constitution dramatically to cover,  
21 isn't it better to look for the solution elsewhere. That is  
22 what the book argued.

23 And then the book said that there was a common law  
24 duty to serve imposed for eight centuries identifiably in  
25 the history of English speaking people, on monopolists, on



1 any business affected with the public interest. And I  
2 suggested that there was a legitimate role for state courts  
3 to play as a sort of provocative agent putting before  
4 elected officials, such as yourself, these issues of  
5 inequality in the provision of services.

6 What Mr. Wilson said to me was simple. He said  
7 "The infra-structure of this state was essentially built,  
8 not by you, not by me, but by the generation of Californians  
9 that is before us. It was built to serve 15 million people.  
10 It has not been adequately tended in the last 30 years, and  
11 we have doubled the state's population. If you have any  
12 fidelity to the things you wrote in that book, you then  
13 can't say no to me when I ask you to try and help in those  
14 areas."

15 I thought I'd driven across the causeway to  
16 discuss being on the Public Utilities Commission, and  
17 insofar as the Governor had much to do with it, I walked out  
18 of the office heading for the Public Utilities Commission.

19 (Laughter.)

20 SENATOR PETRIS: Well, I could give a simple  
21 answer to that problem and still retain your valuable  
22 services. The state of the infra-structure, in my judgment,  
23 is a direct result of a continuing assault on government as  
24 the enemy of the people and snuffing out any increases in  
25 taxes because that helps the enemy by expanding it, and the







1 first victim is the infra-structure.

2 In my city where I live, we still have library  
3 branches of the Public Library System closed down because we  
4 don't want to pay for it, so we don't get the money we used  
5 to get from the state, and we don't get any from the feds,  
6 and it's entirely up to the local effort, and with Prop 13,  
7 we can't get the money.

8 MR. FESSLER: Um-hmm.

9 SENATOR PETRIS: And that can be applied to many  
10 elements of the infra-structure. I didn't think it was that  
11 difficult to take care of the folks on the other side of the  
12 river if it's a public program. If you're going to build  
13 sewers and you don't run them across the river to that part  
14 of town, aren't you up against the Equal Protection  
15 Amendment?

16 MR. FESSLER: No. You are in this sense, that you  
17 have -- the government is guilty of a classification of its  
18 citizens, but unless the citizen can show that having that  
19 service is what is called a fundamental personal right or  
20 that the rationale for the classification is that it  
21 intrudes upon a suspect quality, such as race or ethnicity,  
22 religion, or gender --

23 SENATOR PETRIS: Or economic --

24 MR. FESSLER: -- then all the government needs to  
25 have is what the courts call a rational reason, and the



1 reason that the government has accepted, and I'm speaking  
2 now of the Supreme Court year in and year out, is that funds  
3 are limited and you can't do everything. That is --

4 SENATOR PETRIS: Well, the case --

5 MR. FESSLER: -- that is the primary  
6 constitutional reason why the equal protection of the law  
7 leaves many people in the United States in the circumstances  
8 lamented by the French writer when he noted that the rich  
9 and the poor have an equal opportunity to sleep under  
10 bridges.

11 SENATOR PETRIS: Yes. That was a king, wasn't it?  
12 One of the kings? At any rate, that's why we're here  
13 instead of in France.

14 But that's why I picked the sewer as an example.  
15 It's a very vital public health --

16 MR. FESSLER: Yes.

17 SENATOR PETRIS: -- interest which can be invoked  
18 under the police powers, among other things.

19 MR. FESSLER: Yes.

20 SENATOR PETRIS: And it would seem to me that for  
21 that kind of a service, publicly funded, either through  
22 taxes or service fees, they'd have a hard time maintaining  
23 the right to provide it in one part of the municipality and  
24 not other parts.

25 MR. FESSLER: Yes.



1           SENATOR PETRIS: Yes. Let me go on to a couple of  
2 other subjects.

3           I've been concerned for some time about the  
4 structure that seems to give to the PUC, through custom I  
5 guess more than anything else, such enormous power without  
6 accountability to the public or any other public agency by  
7 virtue of the fact that challenges to PUC decisions have  
8 simply been rejected by the Supreme Court in California for  
9 a few years.

10           Now, I don't know whether that's under a  
11 Constitutional interpretation that they don't have to get  
12 into that question or whether they're just overloaded with  
13 work and they're rejecting a lot of other cases, but under  
14 the present law, that's the only place that's available for  
15 appeal and it's been blocked effectively. As a practical  
16 matter, it's been blocked.

17           Have you given that any thought? Does that  
18 trouble you as a lawyer and a professor of law?

19           MR. FESSLER: I have given it thought, yes.

20           SENATOR PETRIS: And if so, do you have any  
21 recommendations on it?

22           MR. FESSLER: I have given it a great deal of  
23 thought.

24           SENATOR PETRIS: We've had a bill that was passed  
25 that was vetoed by the Governor, so we're back to square one





1 now.

2 MR. FESSLER: Yes. Yes. And candor would require  
3 that I tell you that I testified in opposition to Senate  
4 Bill 1041 when it was pending in the Assembly, and the  
5 reason that I did so is that like most issues that can be  
6 raised in this great forum, there are pluses and minuses on  
7 both sides of this matter.

8 It is a statute which the Legislature can change  
9 that currently says that decisions of the Public Utilities  
10 Commission are reviewable only in the Supreme Court. That  
11 change was brought about by a Legislature in 1912, sitting  
12 in 1912 to 1914, which is, as we teach our children in  
13 California, the Great Reform Legislature in California.

14 Up to that point, decisions of the Public  
15 Utilities Commission were easily taken to court and  
16 challenged in court, and it was cited by then Governor,  
17 Hiram Johnson, as one of the primary reasons that the  
18 historical Railroad Commission had been so totally  
19 ineffectual in protecting the public interest, that large  
20 entities have large sums to tie up matters in court in  
21 litigation.

22 The virtue of having our decisions appealable only  
23 to the Supreme Court, in my judgment, makes the opportunity  
24 for the matter to be developed before the Commission, an  
25 opportunity to bring it before a body which hopefully, and I



1 sincerely believe does, have a strong expertise in  
2 evaluating and critically responding to what it is that is  
3 being moved through the Commission.

4 Now, at the present time, the huge number of  
5 dollars that the Commission deals with, particularly in  
6 setting rate cases, suggests that if you could delay the  
7 implementation of Public Utilities decisions by having them  
8 for a protracted period in litigation, that the dollar  
9 consequences of the uncertainty that that would create would  
10 be something that you would wish to balance in your mind  
11 against the desire, which is one I could not argue with,  
12 that I should be kept accountable. Senator --

13 SENATOR PETRIS: Well, that's why, excuse me,  
14 that's why I thought that SB 1041 was kind of a compromise.  
15 It didn't take us back to 1912 by throwing it into the trial  
16 court.

17 MR. FESSLER: No.

18 SENATOR PETRIS: It started at the appellate  
19 level, just --

20 MR. FESSLER: Yes.

21 SENATOR PETRIS: -- one step below the Supreme  
22 Court --

23 MR. FESSLER: Yes.

24 SENATOR PETRIS: -- and I think that's the reason  
25 it was done that way, to avoid a new flood. What is the



1 objection to that? Is it still a matter of several months  
2 delay and a matter --

3 MR. FESSLER: Well, it is more than months, I  
4 think, Senator. I mean the Judicial Commission's position  
5 on that, or the Judicial Council's position, was that the  
6 appellate court that sits in San Francisco, sits in panels  
7 with a fairly large composition.

8 The idea of having matters of this complexity come  
9 before three judges who are selected at random, as they do  
10 in their panels, was feared because there was no funding of  
11 the Court of Appeal for what they felt were additional staff  
12 that would be required in order for the Court of Appeal to  
13 take on that burden.

14 There was then the feeling that there would almost  
15 invariably be an appeal to the State Supreme Court from the  
16 decision of the Court of Appeal, and so that the matter  
17 would not become one of final judgment for a protracted  
18 period of time. I might state that the first time that I  
19 was in Sacramento subsequent to taking up my  
20 responsibilities, was to come and present the Commission's  
21 views before a committee in the Assembly.

22 The individual that I followed as a witness was  
23 the distinguished President of the Senate. It was not the  
24 easiest task that I have been asked to undertake. I found  
25 that the entire matter of Senator Roberti's discussion of





1 the way in which the Public Utilities Commission handled  
2 petitions for rehearing was very disturbing to me. At the  
3 present time, we are reforming that.

4 For a long while, an individual, or group, or  
5 utility, unhappy with the disposition of a matter before the  
6 Public Utilities Commission, would file, as the statute  
7 prescribes, for rehearing, and the rehearing would almost  
8 invariably be summarily denied, with virtually no further  
9 explanation of why it was that the Commission had done what  
10 it did.

11 It is within my power, as long as I am able to  
12 convince my colleagues, to change that system, and we have  
13 done so. At the present time, as Senator Rosenthal can tell  
14 you, we now give a far more fulsome written response in  
15 disposing of petitions for rehearing.

16 Another reform that I am very interested in is to  
17 sharpen for the Supreme Court's notice as issues upon which  
18 it might wish to review us, the specifics of what we are  
19 doing. I will give you an example.

20 I cannot totally subscribe to the view that the  
21 Supreme Court has been disinterested in the Public Utilities  
22 Commission. The individual who swore me into this office,  
23 Justice Mosk, is a person whom I admire immensely, and  
24 Stanley Mosk is probably the sternest critic of the Public  
25 Utilities Commission in terms of making certain that our



1 process is the process that is due. That was one of the  
2 reasons I wished to have him swear me into this job.

3 By giving a more specific matter, long ago,  
4 Stanley Mosk wrote an opinion on retroactive rate making and  
5 said that we cannot go back and apply retroactively  
6 decisions that affect utilities' income. That's all to be  
7 done prospectively under legislation that has been passed.  
8 Well, retroactive rate making has become a cliché around the  
9 Commission. Whenever you don't like a result, you call it  
10 retroactive rate making.

11 I am trying, and you'll see in six months whether  
12 I have succeeded or not if I remain there, to present a case  
13 that will allow the Court a fulsome record on which to  
14 revisit the issue of retroactive rate making and to clarify  
15 the Supreme Court's view on that vital matter as it has  
16 evolved over the 11 years that we have been attempting to  
17 implement the mandate of the decision that was given to us.

18 It may be that a year or two from now, looking at  
19 the Public Utilities Commission, your very legitimate  
20 concerns will be somewhat allayed. I hope they will be. If  
21 not, it is absolutely the prerogative of the Legislature to  
22 again visit this and come up with such solutions as you deem  
23 best.

24 SENATOR PETRIS: Sounds like Senator Roberti's  
25 bill did have some impact even though it was vetoed.



1           MR. FESSLER: There is no question that Senator  
2 Roberti's bill --

3           SENATOR PETRIS: Yes.

4           MR. FESSLER: Senator Roberti had two bills --

5           VICE CHAIRMAN CRAVEN: Senator Roberti, you had a  
6 comment?

7           CHAIRMAN ROBERTI: There were two bills. I would  
8 like to interject, 1041. However, I still believe that  
9 there should be appellate court review. Of course, the  
10 Governor has vetoed that piece of legislation. The reason  
11 why the bill was introduced, and it's not a problem unique  
12 to the PUC, it's something that happens to all regulatory  
13 agencies, that after a period of time, the regulated become  
14 subliminally, if not actually, dominant on the regulated  
15 Board.

16           Without a real appeal, you have no recourse from  
17 that cozy relationship. That can happen any time you have  
18 an entity regulating major industries. That was the reason  
19 for the legislation. And I suspect that maybe tempered to a  
20 degree, you know, by good appointments, it is still a  
21 problem that can always arise. So I think the Governor made  
22 a serious mistake vetoing the bill.

23           However, the other legislation, the Board is  
24 addressing those issues. The questions of ex parte orders,  
25 incomplete records, that no quasi-judicial body should







1 engage in if you are supposed to have a record open to all  
2 the litigants so that they can in the future continue to  
3 litigate on, the PUC does appear to be making some changes  
4 in this area. And I'll return to Mr. Fessler.

5 MR. FESSLER: Yes. I think it's important that I  
6 obtain from you, as the leaders in this state, some  
7 understanding that when legislation is introduced that  
8 affects the entity that you have entrusted to my partial  
9 responsibility, I would feel that it would be my obligation  
10 to look at that and to communicate with you my sentiments.  
11 That is by way of advice, advice which you are free to  
12 accept or reject in whole or in part.

13 As I have told Senator Roberti, I will do what I  
14 can to make the Public Utilities Commission as responsible  
15 as I can figure out a way to make it, and when I have done  
16 that, then I have discharged my responsibility. And if you  
17 find in your collective judgment that that is an  
18 unsatisfactory result, then it is absolutely, utterly, and  
19 could not be otherwise your responsibilities and  
20 prerogatives to change that.

21 On the issue of intermediate appellate review, I  
22 guess I am still persuaded that the negatives to the public  
23 interest outweigh the positives, and that is my advice to  
24 you. I certainly know that to be advice.

25 The ex parte matter to which the Senator alluded



1 is very very important. The first time I met a member of  
2 the State Senate, I actually met two, Senator Beverly and  
3 Senator Rosenthal, at an affair hosted by one of the  
4 northern counties, and Senator Rosenthal was demonstrating  
5 two things. First, how to eat crab. I'm from Wyoming  
6 and --

7 (Laughter.)

8 MR. FESSLER: -- well, Friday's were tuna at my  
9 house, out of a can.

10 (Laughter.)

11 MR. FESSLER: And second, the issue was ex parte.  
12 And I told the Senator then that I had been on the job eight  
13 days and that I thought there ought to be an ex parte rule  
14 at the Public Utilities Commission. And I think that the  
15 Senator will agree that that was before the Senator told me  
16 there was any legislation that was pending. There is now an  
17 ex parte rule at the Public Utilities Commission.

18 And as I wrote Senator Roberti, if a year from now  
19 -- because I don't know whether we go it right, Senator  
20 Petris, I am not certain, because there's a balancing act  
21 there, too. You don't want to keep people from coming into  
22 see you. We've opted for a sunshine rule, very much along  
23 the line that Senator Roberti and Senator Rosenthal had  
24 sponsored in their legislation.

25 But whether it is extensive enough or too



1 extensive, I would like to have a period of time of  
2 experimentation, and at the end of that period of time,  
3 because Senator Rosenthal frequently makes the point with me  
4 that he wants rules of the Commission that can survive  
5 changes in the composition of the Commission, if you wish to  
6 put that in the form of legislation, you will have no  
7 opposition from me.

8 SENATOR PETRIS: There are just two other  
9 points --

10 VICE CHAIRMAN CRAVEN: Very well. If you would --

11 SENATOR PETRIS: I'll wrap it up.

12 VICE CHAIRMAN CRAVEN: Do. Thank you.

13 SENATOR PETRIS: The one is we've enacted some  
14 statutes creating lifeline provisions and other policy  
15 decisions that are beneficial to certain people in our  
16 society. There's a range of them. Do you feel that's good  
17 public policy?

18 MR. FESSLER: Yes.

19 SENATOR PETRIS: The second question is just a  
20 matter of curiosity. When we enacted the bill that requires  
21 a double membership, I don't recall, you know, that one  
22 member has to be --

23 MR. FESSLER: Oh, yes.

24 SENATOR PETRIS: I don't recall if there was a  
25 Constitutional amendment involved. Once upon a time, a





1 holding of two separate state offices was prohibited by law,  
2 but I don't remember whether that was in the Constitution or  
3 some statute. I suppose that problem was resolved in order  
4 to get this one passed.

5 When I first came to the Legislature I was a  
6 practicing attorney and I was a notary public, and after  
7 being sworn into office as a member of the Assembly, I was  
8 notified by the Secretary of State that I had to resign one  
9 or the other because I was holding two state offices.

10 MR. FESSLER: I see.

11 SENATOR PETRIS: And now we get a Commissioner of  
12 the Transportation Commission and a Commissioner of PUC and  
13 everything's okay. We'll have to explore that some other  
14 time. It's not vital to this proceeding.

15 MR. FESSLER: Thank you.

16 SENATOR PETRIS: Thank you very much.

17 VICE CHAIRMAN CRAVEN: Thank you, Senator Petris.

18 We have, I know, two other Chairmen with us today,  
19 and I'm presuming they're here to make comments or to state  
20 their particular case.

21 Senator Kopp, do you want to make a comment?

22 SENATOR KOPP: If I could ask some questions and  
23 make a comment or two related --

24 VICE CHAIRMAN CRAVEN: You may.

25 SENATOR KOPP: -- to the field of subject matter



1 in which I'm particularly interested. And in doing so, let  
2 me preface my remarks and questions with the fact that I  
3 want memorialized that I don't have any problems or quibbles  
4 with Dr. Fessler as an individual. I believe him to be a  
5 man of high intellect and consummate integrity, and of the  
6 very best of intentions. So that my questions, which will  
7 give expression to my concerns, relate to the California  
8 Transportation Commission as a body and its policy  
9 direction.

10 Now, some of these issues may be the result of a  
11 lack of understanding. Others, frankly, may be the result  
12 of the CTC's staff's desire to build a larger empire. The  
13 staff has increased by about 70 percent in just the last  
14 three or four years. So I think it would be useful, at  
15 least for the Members of the Committee and you as a Member  
16 of the California Transportation Commission, to hear those  
17 concerns and address them in an appropriate manner.

18 First of all, the 1989 Transportation Blueprint  
19 and then the 1991 Federal Transportation Act contained major  
20 shifts in policy and the methods by which we plan and  
21 program transportation dollars. In my opinion, the two most  
22 fundamental changes in both of those Acts are first, a major  
23 shift in decision making from the state, namely CTC, to the  
24 regional entities and to the local entities. That is not  
25 only the intent of the 1989 Blueprint, but it's explicit in



1 its provision, which I have been re-reading to make sure  
2 that my memory has not been impaired.

3 And then secondly, of course, a major shift in the  
4 expenditure priorities from highway construction to public  
5 transit, rail transit, and transportation strategies  
6 intended to reduce automobile traffic.

7 My concerns relate to how the Commission, in my  
8 opinion, isn't implementing those shifts in policies. And  
9 the same thing was true of the federal act, which allocates  
10 monies almost directly to large urbanized areas in the  
11 United States. As a matter of fact, in some instances what  
12 I see is the Commission is really fighting that shift in  
13 policy.

14 Let me start with the annual report. Here it is.  
15 It's a two-volume document. Besides the fact that I think  
16 it's a waste of time and public monies to issue such a  
17 lengthy and long-winded report which, in many parts,  
18 rehashes the same old material every year, it contains some  
19 substantive material and assertions, which aren't true, and  
20 recommendations that are contrary to the explicit provisions  
21 and the implicit intention of the Blueprint legislation.

22 For example, I'm personally offended by the  
23 report's implication that the Blueprint legislation is  
24 disjointed, lacks direction, and that I can assure you  
25 Senator Roberti was part of that process that all of the







1 provisions in the '89 Blueprint were carefully prepared to  
2 address specific issues and objectives, including the goal  
3 of reducing CTC's influence on programs and policies.

4 So I'd like to know if you can tell me why the  
5 Commission feels that the blueprint is in error, and as this  
6 report says in at least one place, why it needs, quote,  
7 unquote, "fine tuning"?

8 MR. FESSLER: Well, Senator, I'm a member of the  
9 Transportation Commission since March. I do not have the  
10 benefit of the prior history to which you allude. I will  
11 say to you candidly that I had asked subsequent to the  
12 meeting that we had approximately three weeks ago in which  
13 you raised, very frankly, many of these concerns, to have a  
14 briefing on the statutory predicates of the Commission's  
15 responsibility, and that has been prepared for me.

16 I would be happy to, and consider it my  
17 obligation, to share it with you, and would be happy to  
18 share it with other Members of the Committee. My feeling on  
19 the broader question that you raise as to the role of the  
20 state, it seems to me that the legislation as I understand  
21 it requires that local transit agencies and entities of  
22 local government, in consultation with the Transportation  
23 Commission, develop policies which are then funded, if they  
24 are to use state funds, through the State Transportation  
25 Improvement Program.



1           Now, that State Transportation Improvement Program  
2 enjoins on the CTC the obligation to see that those funds  
3 are expended in a manner that is consistent with the  
4 guidelines that the Legislature directed the CTC to adopt.

5           Now, I was not on the CTC at the time that those  
6 guidelines were adopted. My understanding gleaned in the  
7 months that I have been on the body is that the primary  
8 concern of the Commission is to see to it that state funds  
9 are committed only to those projects which are prospectively  
10 thought to be cost effective and which are congruent with  
11 state policies and federal policies so that there is some  
12 check upon local bodies, many of whom do not have the  
13 resources to become intimately familiar with the  
14 requirements of both state and federal law.

15           I believe that the Commission therefore is  
16 discharging its responsibilities when it engages in an  
17 active and vigorous dialogue with local agencies at the time  
18 that they are being before the Commission petitioning for  
19 the release of state dollars.

20           SENATOR KOPP: Well, one thing the blueprint did  
21 was redefine, and it did this intentionally, redefined the  
22 STIP. Another thing, it established new programs.  
23 Assemblyman Katz' bill was the instigator of that, it was  
24 also in our Senate bill, on TSM's --

25           MR. FESSLER: Um-hmm.



1           SENATOR KOPP: -- and the state local partnership,  
2 and the decision making on those two items was deliberately  
3 taken away from CTC.

4           MR. FESSLER: Well, certainly the --

5           SENATOR KOPP: Was the Legislature wrong in doing  
6 that, or is that, again, part of why you're asking why the  
7 Commission asks that we fine-tune? Is it fine-tuning, so  
8 that the power over all that money that's allocated to those  
9 two items is returned to CTC?

10          MR. FESSLER: Senator, one of the things that is  
11 part of my own transportation effort is to get myself from  
12 my home in Davis to San Francisco in time to be at work on  
13 Monday morning. This generally has me journeying on Sunday  
14 evening.

15          There is a remarkably similar voice that I hear on  
16 the radio as I drive back, and that voice is that of a radio  
17 commentator who is, I think, considered to be quite expert  
18 at placing questions that are difficult to answer with a yes  
19 or no. I --

20          (Laughter.)

21          MR. FESSLER: -- find that there are many  
22 statements that you've made, and I don't mean to be other  
23 than within my limitations to be as responsive as I can.

24          My, again, fundamental understanding is that what  
25 the Legislature has done is ceded to local agencies the







1 authority to make the programs, as they deem them,  
2 expedient. And then if they wish to have state money  
3 involved in funding those programs, to come before the  
4 Transportation Commission and to acquaint the Transportation  
5 Commission with the nature and the objective and the  
6 budgetary aspects of those programs, and that the  
7 Commission's function is then not to simply mindlessly write  
8 a check, but to determine whether or not the state laws and  
9 state regulations and the interaction which Caltrans must  
10 generally bring to bear in carrying those projects forward,  
11 that that coordinating and reviewing and counseling  
12 responsibility is with the Commission.

13 If I am mistaken, then I would be most obliged to  
14 be corrected, and I have no desire to participate in  
15 exercising government authority which is beyond that  
16 authority which the Legislature has conferred upon the  
17 Commission. As I say, I am possessed of a detailed  
18 memorandum that has been gone over by legal staff to  
19 determine what the Commission's view of its legal  
20 obligations are, and I think perhaps sharing that with your  
21 office may be useful because that may get to the very root  
22 of where the Commission is in error, if it is.

23 SENATOR KOPP: I would like to read that  
24 memorandum.

25 MR. FESSLER: I would be most happy, Senator.



1 And --

2 SENATOR KOPP: Let me turn to the Federal  
3 Transportation Act of 1991, which makes some major changes  
4 in transportation policy, along the lines that I've  
5 described as far as changing priorities from highway to  
6 public transit --

7 MR. FESSLER: Yes.

8 SENATOR KOPP: -- alternative types of travel. We  
9 had one aborted hearing, we meaning the Senate Committee on  
10 Transportation, when there was a power outage, but it was  
11 clear from the testimony of the Director of Caltrans, and  
12 it's clear from other comments that have been made, because  
13 there was delay in scheduling that hearing because the  
14 Department and CTC staff did not understand the new federal  
15 law, didn't understand all of its ramifications.

16 I'll make that statement for the record today,  
17 that neither the Commission nor the Department nor anyone  
18 else has figured out all of the impacts and the effects and  
19 ramifications of the federal law.

20 That being the case, why is the Commission so  
21 anxious to adopt a 1992 STIP in advance of total  
22 understanding of what the effect of the federal law is?

23 MR. FESSLER: Well, Senator, I think that it is my  
24 impression that the staff of the CTC -- if I could just  
25 -- you have now made several references to a matter that I



1 did not realize was one of concern. And candor would  
2 require that I share with you the view that I am, Senator  
3 Petris' concern about the constitutionality of the  
4 arrangement notwithstanding, on these two entities, one of  
5 which, the Public Utilities Commission, has a staff of some  
6 1300 individuals, and I have found some of the finest people  
7 I have met thus far in my life to be there.

8           The California Transportation Commission, as I see  
9 it, has a very small staff of among the most hard working  
10 people I have ever encountered. I frequently do not have an  
11 opportunity to get to that office because I leave San  
12 Francisco and drive up until six or seven at night, and Mr.  
13 Chung or Mr. Remen seem to invariably be there. I simply  
14 want to share that with you because it's an impression that  
15 I have gained in working with these people over the past 11  
16 months.

17           I think that there is a broad understanding of the  
18 direction taken by the federal legislation. As you know,  
19 the legislation was in its very lengthy gestation process,  
20 starting out with the Administration making a proposal,  
21 which was dead on arrival on Capitol Hill, the Senate then  
22 coming forward with the Moynihan proposal, which had some  
23 very exciting things from my own personal value judgment  
24 perspective, and then Chairman Rowe on the House side coming  
25 up with a bill that looked quite unlike the Senate







1     legislation.

2             Now, Congressman Mineta and other Californians,  
3     Congressman Lewis, worked hard to try and protect  
4     California's interest in that regard. I was sent back in  
5     May to meet the California Congressional delegation to  
6     attempt to press the notion that we have never ever received  
7     any federal funds for the maintenance of bridges in this  
8     state, and yet under Senator Moynihan's bill, suddenly,  
9     because northeastern states had let their bridges go to rack  
10    and ruin, there was suddenly going to be a large chunk of  
11    federal money for bridge rehabilitation.

12            That was needful. None of us wish to see, as  
13    happened in New York, a portion of the Tappan Zee Bridge  
14    just simply fall off. It's off-putting if you're a  
15    commuter.

16            Then the issue was well, what could we do for  
17    California? Well, we asked that money for seismic  
18    retrofitting be put into the matter as something that was a  
19    legitimate expenditure under that category, and I know that  
20    that was done. I don't know where that idea came from, but  
21    I was one of the people who was sent to try and push that  
22    idea with the California Congressional delegation.  
23    Ultimately, it wound up in the bill.

24            A concern is that the State of California is  
25    trying to develop, in rail, an area of your keen leadership,



1 a coordinated statewide rail system that includes  
2 procurement, procurement that will be standardized, I hope,  
3 procurement that will allow industry and jobs to be created  
4 in this state. I know that is a keen interest of yours, it  
5 is certainly a keen interest of mine, and the only two  
6 specific interactions that I have had with your office have  
7 been, I hope from your perspective, in the satisfactory  
8 supporting role. And it is ironic that in each instance it  
9 is an involvement of the State in attempting to talk what I  
10 think is common sense to groups of local agencies.

11 The first being the issue of the procurement of a  
12 right of way on the Southern Pacific right of way, partly in  
13 your constituency, and the other, the recently sadly  
14 completed, yet to be completed, but at least resolved,  
15 matter of the Green Line in southern California. And so I  
16 think there is a role for the state government to play --

17 SENATOR KOPP: Well, but I'm concerned now with  
18 the timing of the 1992 STIP, and why the CTC is rushing to  
19 adopt the STIP before the full implications of the federal  
20 act are known.

21 MR. FESSLER: Again, just as a citizen, I don't  
22 know that I would agree with the term "rushing". One of  
23 the --

24 SENATOR KOPP: Well, now, rushing is --

25 MR. FESSLER: Yeah.



1           SENATOR KOPP: -- perhaps a strong word, because  
2 there are statutory requirements --

3           MR. FESSLER: Yeah.

4           SENATOR KOPP: -- but such a requirement was set  
5 aside in 1989 for good cause and such a requirement can be  
6 set aside in 1992 for good cause.

7           MR. FESSLER: Well, and again, those are matters  
8 to which I contribute a minor collaborative role. But I  
9 would say that one of the forces that is plying its way, as  
10 it ought to, upon the Public Transportation Commission, are  
11 the very representatives of the local governments and local  
12 agencies.

13           I mean I was in this building two weeks ago for  
14 two days of STIP hearings on the northern STIP, and had been  
15 in southern California before that. These agencies are  
16 there. They have urgent demands for the improvement of  
17 transportation in their localities, and they need dollars in  
18 order to keep those programs alive and moving.

19           And so, again, as in the colloquy with Senator  
20 Petris, it seems to me that we're involved in balancing the  
21 need to keep programs alive, to keep delivery schedules with  
22 the desire to be the most expert that we can.

23           SENATOR KOPP: Well, but delivery schedules aren't  
24 being met now, and the problem with adopting a STIP is that  
25 then, of course, it's in black and white, people rely on it,





1 along comes a nuance of the federal act which compels a  
2 revision of the STIP, it's difficult to revise it because  
3 there are winners and losers --

4 MR. FESSLER: Yes.

5 SENATOR KOPP: -- and number two, that of course  
6 people are sorely disappointed. And that's why I suppose I  
7 use the word "rush" in the context of the fact that we don't  
8 know nearly the nuance of the federal act.

9 Although here's another point which is very  
10 bothersome. Last Friday, a whole group of Bay Area  
11 Transportation officials, along with Caltrans, CTC staff,  
12 had an unprecedented meeting to decide on a group of  
13 transportation projects to deal with the air quality  
14 requirements and the air quality litigation pending in the  
15 United States District Court in San Francisco, and the  
16 transportation needs relating to the air quality  
17 requirements.

18 I wasn't there, but I'm informed that everyone, in  
19 fact there was a large story about it in the Chronicle, in  
20 the meeting, including the Air Quality district people,  
21 Caltrans, agreed with the list and promised to work  
22 cooperatively to implement it, except the Commission, and  
23 that at the meeting one of the top CTC staff people made  
24 what is to me the incredible statement that, oh, the federal  
25 act really doesn't represent much of a change in



1 transportation policy.

2 Can you tell me why CTC did not join that  
3 agreement to --

4 MR. FESSLER: No, I cannot, Senator. You are  
5 reporting facts to me of which I have no prior acquaintance.

6 SENATOR KOPP: Well, I'm going to write a letter  
7 to get an answer on it anyway. In your testimony -- or not  
8 in yours, but your staff's testimony on January 14th, last  
9 meeting of the Senate Committee on Transportation, one of  
10 the staff testified that the federal act gives CTC broad  
11 authority over air quality, and that was the genesis of the  
12 Commission's authority to mandate electrification of all  
13 rail systems.

14 I don't see that broad authority in the Government  
15 Code, so can you elaborate on why the Commission has such  
16 authority?

17 MR. FESSLER: Surely. Again, I was not present at  
18 that hearing, and I would ask the Members of the Committee  
19 to take notice of the fact that normally --

20 SENATOR KOPP: No, you were not present.

21 MR. FESSLER: But I mean it would not be normal  
22 for someone in my position. The Transportation Commission  
23 meets as a body approximately two days each month. My  
24 dominant responsibilities are on the Public Utilities  
25 Commission.



1 I am very familiar and would be prepared to  
2 discuss it at whatever length is the pleasure of the  
3 Committee, the efforts of the CTC to concern itself with the  
4 mode of propulsion for commuter rail in southern California,  
5 because it is not that the CTC has authority over air  
6 quality issues, but that the AQMD, the Air Quality  
7 Management District, has authority. And the concern is that  
8 in this instance we are going to be spending debt money. I  
9 don't think there can be any responsibility thrust upon a  
10 public servant that is more chilling than the obligation to  
11 spend funds, not funds that have been taken out of the  
12 economy via taxation, but funds that have been borrowed  
13 against the incomes of people whose lives are not yet in  
14 being, and that's exactly what we're doing with Proposition  
15 108 and 116, and purchasing major elements of what we hope  
16 will be significant improvements in the state transportation  
17 matter only to have the whole thing shut down in the early  
18 part of the next century because of noncompliance with air  
19 quality standards that have already been articulated by the  
20 district. Where we would ever then get the money to do that  
21 system again bothers me.

22 As a member of the Commission, I first became  
23 aware of the issue of air quality and its ramifications for  
24 all of these expenditures on commuter rail in southern  
25 California, and we are talking a very large sum of money, in





1 May when Bill Leonard, Senior, asked me to look into the  
2 whole issue of what would be required for an investor-owned  
3 utility to participate in electrification.

4 In July, I discovered, much to my amazement, that  
5 Southern California Edison, the Department of Water and  
6 Power, had been in discussions with the Los Angeles County  
7 Transportation Commission over electrification for some  
8 several years, matters which had never been disclosed in any  
9 hearings before the Transportation Commission.

10 I then found that there was a plan adopted by that  
11 local agency that went out to the year 2020, that in all of  
12 that time anticipating the expenditure of a sum of money  
13 which would be the largest peacetime expenditure by any  
14 government in the history of the United States, there wasn't  
15 one cent for electrification, notwithstanding the fact that  
16 the system would be shut down in the year 2010 at the latest  
17 by the then existing adopted AQMD air quality standards.  
18 That bothered me.

19 And I thought that it was the responsibility of a  
20 State body to ask these two local agencies if they were  
21 talking with one another and if they were engaged in a  
22 dialogue that was going to permit them to coexist.

23 VICE CHAIRMAN CRAVEN: Mr. Fessler, may I  
24 interject?

25 Senator Kopp, do you have much more to go?



1           SENATOR KOPP: No.

2           VICE CHAIRMAN CRAVEN: Fine. We're getting --

3           SENATOR KOPP: I apologize.

4           VICE CHAIRMAN CRAVEN: -- into very interesting  
5 and somewhat introspective glances at a lot of these  
6 questions, all of which, I guess, are germane, but not as  
7 germane as deciding whether you're qualified or not  
8 qualified. And I have a tendency to feel that we're kind of  
9 veering off into things that probably could be very well  
10 handled over a delicious lunch somewhere, if you will pardon  
11 me, because I still have Senator Rosenthal to deal with, and  
12 you know what a problem that is.

13           (Laughter.)

14           SENATOR KOPP: Well, let me just point out that  
15 Section 14520 of the Government Code says the Commission  
16 shall advise and assist the Secretary of Business,  
17 Transportation and Housing Agency and the Legislature in  
18 formulating and evaluating state policies and plans for  
19 transportation programs in the state.

20           And even though there is some language in Props  
21 108 and 116, particularly Proposition 116 about costs, that  
22 clearly is the guideline for what I believe CTC should do  
23 and should have done, if it is bothered, as it  
24 understandably is bothered by the scenario you've described.

25           Just two other questions. Again, this report, and



1 you know there's a section in here on transportation  
2 education in high schools in California.

3 MR. FESSLER: No, Senator, I did not know that.

4 SENATOR KOPP: Well, you know, that's indicative  
5 of why this report is just loaded up and it's evidentiary of  
6 what CTC or its staff or both believe what the mandate is,  
7 including, last question I have, the acting as kind of a  
8 Board of Directors for Caltrans. There's no statute that I  
9 know of that designates CTC as the Board of Directors for  
10 Caltrans.

11 Can you explain how or in what manner CTC has  
12 acted in the way of Board of Directors for the Department,  
13 which in effect takes over a legislative function?

14 MR. FESSLER: No, I cannot, because I would say to  
15 you that in the 11 months that I've been there, I have never  
16 perceived myself as functioning as a Director of Caltrans.

17 SENATOR KOPP: Well, thank you very much --

18 VICE CHAIRMAN CRAVEN: Thank you, Senator Kopp.

19 SENATOR KOPP: -- Professor Fessler, and thank  
20 you, Mr. Chairman, members of the Committee.

21 VICE CHAIRMAN CRAVEN: Very well.

22 SENATOR KOPP: As I said at the beginning, none of  
23 this is meant to impugn the integrity or intellect of  
24 Professor Fessler, but I say to you, Mr. Chairman and  
25 Members, it's very bothersome to observe, as I perhaps do on







1 a more regular basis than other Members of the Committee,  
2 what CTC is assuming to itself in transportation policy  
3 making. Thank you.

4 VICE CHAIRMAN CRAVEN: Thank you. Hersch, you've  
5 been very patient. Senator Rosenthal, you're up.

6 SENATOR ROSENTHAL: Thank you very much, Mr.  
7 Chairman, and I'll try to follow your previous directions in  
8 terms of limiting myself somewhat.

9 The first thing I'd like to say is that the rate  
10 payers of this state are at a crossroads. We have the  
11 Governor making three appointments to the Commission, which  
12 is going to possibly chart a new course of utility service  
13 and regulation in California, and the thing that I'm  
14 concerned about is that we select members because they're  
15 going to have a great influence over utility services and  
16 the bills which the rate payers in California are going to  
17 be paying. Somewhat different I think than the previous  
18 Commission which had as its particular role deregulation and  
19 diversification.

20 So we're moving on to new areas, and the kinds of  
21 questions that I have, and some of these I've discussed with  
22 you, is the perception that I was concerned about some  
23 public remarks which suggested, and to some people almost  
24 sounded like a threat, that if parties had problems, that  
25 they shouldn't run to the Legislature, but should depend



1 upon the Commission to make the decisions. And that  
2 bothered me, as I indicated to you, because it appeared to  
3 be more of a confrontation rather than collaboration with  
4 the Legislature.

5 Why shouldn't we be concerned about that  
6 perception?

7 MR. FESSLER: Well, I think you very properly were  
8 concerned with the perception, Senator, and as I attempted  
9 to respond to having received from your very able staff the  
10 news that you were concerned, I immediately wrote to you and  
11 attempted to place the comments that I had made in the  
12 context. And I have received, I suppose since I've been on  
13 the Public Utilities Commission, I have received a very  
14 large volume of mail, most of which is filed.

15 There is one piece of correspondence that is not  
16 filed, it is in my desk drawer, and that is the letter that  
17 I received back from you in which you pointed out to me that  
18 there may be one forum, namely a classroom, where one can  
19 make statements and feel that the give and take of the  
20 dialogue in the classroom is a great curative, but that if I  
21 was going to be a public official, I would have to moderate  
22 and think carefully about the way in which anything I said  
23 might be interpreted. I considered that then and consider  
24 it now the advice of a wise man.

25 I hope that over the months you have come to the



1 conviction that I have utterly nothing but the highest  
2 regard for this body, and that it is my desire to work in a  
3 collaborative manner with the Legislature. I was concerned  
4 and remain concerned that individuals would come to members  
5 of the Legislature with statements which by the hearings  
6 that you have chaired when you asked had you ever brought  
7 these things to the attention of the Public Utilities  
8 Commission, the witnesses said to you no.

9 It is my hope that if there are problems going on  
10 in San Francisco that are causing individuals to be unhappy,  
11 that those problems would first be brought to my attention  
12 because the primary obligation to clean up the act is mine,  
13 and it seems to me that the burdens that are on you are  
14 many, and the burden on me is more specific. That was part  
15 of my concern.

16 The other aspect that formed the context of my  
17 remarks was my concern about the Legislature having enacted  
18 a process, a process with regard to the issue of repowering  
19 utility generating facilities. And here we had a piece of  
20 legislation which was seeking, without ever filing with the  
21 Public Utilities Commission, an exemption from that process.  
22 And I was concerned about that because you cannot be, in my  
23 judgment, a regulatory body that expects everyone to play by  
24 the same rules if the feeling is that the rules are ones  
25 which can be exempted.







1           Assembly Member Peace has told me of a great  
2 concern for speed, and I recognize that decisions that are  
3 delayed frequently become decisions, and those are not the  
4 best decisions.

5           And so those were the two matters that I was  
6 concerned about, that matters of grievance be brought. And  
7 if we fail to address them, then it is the most singularly  
8 appropriate thing for citizens, either individually or  
9 collectively, to do, to go to their elected representatives.  
10 But I believe that part of my responsibility is to also be  
11 reactive to those problems and attempt to keep them from  
12 having to mature to the point of taking up time on your  
13 agenda.

14           SENATOR ROSENTHAL: I know that the PUC is in the  
15 midst of a controversy concerning access to Canadian natural  
16 gas.

17           MR. FESSLER: Yes.

18           SENATOR ROSENTHAL: And I agree with you that we  
19 should not be paying too much for natural gas, and I don't  
20 want to get into the question of that specific -- of the  
21 merits of the PUC position, but on the perceived conflict  
22 between the PUC and the Energy Commission.

23           MR. FESSLER: Yes.

24           SENATOR ROSENTHAL: There seems to be an example  
25 of where California is sending mixed signals on our energy



1 policy, and I guess I'd ask you to briefly describe and tell  
2 me how we ought to deal with this situation, because I have  
3 to deal with both the PUC and the Energy Commission --

4 MR. FESSLER: Indeed.

5 SENATOR ROSENTHAL: -- and I'm getting two  
6 different viewpoints on whatever that situation happens to  
7 be.

8 MR. FESSLER: Yes. And the Senator held a very  
9 useful hearing about six weeks ago that I came and testified  
10 at. I think that with regard to the Energy Commission and  
11 the Public Utilities Commission, there are areas of  
12 jurisdiction and responsibility that are shared. And  
13 whenever that happens, in other words, whenever you have two  
14 advisory bodies counseling you as to where the public  
15 interest may be found, there is the possibility that you  
16 will receive advice which is differing. And that can be  
17 very fatiguing if you are a decision maker.

18 I suggested to Chairman Rosenthal at the time, and  
19 I repeat to the body, that I feel that on matters of this  
20 gravity, that to have the opportunity to receive the advice  
21 of two highly responsible agencies is not evidence, even  
22 when that advice is not always congruent, that is not  
23 evidence of a government in crisis, it is a government which  
24 is taking care to hear from a variety of perspectives.

25 On the matter of the Canadian gas situation which



1 the Chairman raises, I respect and share his belief that it  
2 would be ill-advised for us to discuss this matter publicly  
3 because the issue on the capacity brokering decision, is  
4 pending on a petition for rehearing, and as I had told  
5 Senator Petris some time ago, we take those matters very  
6 very seriously.

7 But there is a problem, and the problem is that  
8 you seek in the procurement of natural gas, as with any  
9 other essential to our society, two things. You seek  
10 stability of a source and you also seek the best possible  
11 price from the vantage point of consumers. Would that those  
12 were always pointing you toward the same deal, but  
13 frequently there is an attempt made to charge more for  
14 security, and the issue is do we have a situation in which  
15 one of our utilities erred beyond prudence on such. That  
16 matter will come before us, and I will have a responsibility  
17 for participating in that decision.

18 But I'm very grateful for your concern about this  
19 matter because it is a matter of great interest to the  
20 people, and as we find out now, even to the rate payers at  
21 SMUD.

22 SENATOR ROSENTHAL: Right.

23 MR. FESSLER: Yes.

24 SENATOR ROSENTHAL: I, as you know, am a strong  
25 supporter of intervenor funding programs.







1 MR. FESSLER: Yes.

2 SENATOR ROSENTHAL: Created the one at the Energy  
3 Commission. The Auditor General recently criticized the  
4 PUC's intervener program as being overly restrictive --

5 MR. FESSLER: Yes.

6 SENATOR ROSENTHAL: -- and inhibiting, and I'd  
7 just like to get your ideas about what you think how you  
8 would change or at least move in some other direction other  
9 than the existing one in terms of intervener programs.

10 MR. FESSLER: Senator, I will state for the  
11 Members of the Committee that I am in favor of intervener  
12 funding. In the last session, the first session of this  
13 Legislature, I worked with Assemblywoman Moore to come to a  
14 consensus on the content of AB 1975, and that continues to  
15 be my own personal position.

16 I think that the long term future of intervener  
17 funding should have as its goal to broaden public  
18 participation beyond where it is at the present time,  
19 because at the present time we receive very very valuable  
20 contributions to our deliberative processes from groups like  
21 UCAN in southern California and TURN in northern California.  
22 But as Senator Roberti aptly observed an hour ago, there can  
23 become a relationship growing over time that itself takes on  
24 the quality of the institution, and I would like to see  
25 public participation be as broad as possible.



1           Now that goes back to the issue of adopting at the  
2 Public Utilities Commission, it seems to me, alternative  
3 dispute resolution, which takes us out of this very formal  
4 trial type hearing, because many of the restrictions on  
5 intervenor funding at the present time are rooted in the  
6 requirement that the judge make certain specific conclusions  
7 that his or her decision was meaningfully influenced by the  
8 contribution of a specific intervenor.

9           I think that if we can get to more useful  
10 proceedings at the Commission or at least have a variety of  
11 tools for dispute resolution, we will do so with a heavy  
12 emphasis on having as one of the goals of those reforms  
13 broadening public participation, and recognizing that many  
14 members of the public, both individually and collectively,  
15 should not be asked to themselves fund that participation in  
16 which they are helping make public policy.

17           SENATOR ROSENTHAL: Now, on another issue, on  
18 telephone issues, there has never been a greater time for  
19 change in the telecommunications arena as Congress and the  
20 states are debating what services should be brought over  
21 what wires into all of our homes.

22           Do you have a global view about what you think our  
23 telephone network should be like? Should, and I don't want  
24 to -- I'm going to ask you a question that you may not be  
25 able to answer because you're going to have to deal with it



1 perhaps, but just as, for example, in the natural gas field,  
2 we have a purchase and a transportation that is opened up so  
3 that there is competition in this arena.

4 MR. FESSLER: Yes.

5 SENATOR ROSENTHAL: I'm thinking that in some time  
6 in the future we ought to be talking about the same type of  
7 thing in electricity, in which you pay for transportation  
8 and you wheel electricity --

9 MR. FESSLER: Yes.

10 SENATOR ROSENTHAL: -- to wherever it's needed by  
11 whoever it's needed.

12 Similarly now, there's this discussion going on in  
13 Congress as to whether the telephone company wire into your  
14 home should be providing the services in addition to being  
15 the transportation.

16 Do you have any overall global feelings about that  
17 subject? Or those --

18 MR. FESSLER: I have found that the most dangerous  
19 tendencies that a person in my position can have is to  
20 become prematurely global.

21 I recognize that we are dealing here with the  
22 vestiges of what at one time many people considered to be  
23 one of the most useful monopolies developed in the  
24 Republic's history, and that was the Bell System. Through  
25 litigation the Bell System was broken up.





1           In the field of telecommunications you not only  
2 have that major development, but you also have the  
3 development that the Bell System's tremendous investment in  
4 copper wires all over the United States has now been  
5 leapfrogged by the development of technology that is no  
6 longer dependent upon copper wires, indeed has obsoleted  
7 copper wires in many areas in telecommunications.

8           My concern about turning everything over to  
9 competition, and I am a person who believes in the  
10 marketplace, I believe in marketplace mechanisms, but I also  
11 believe that there's such a thing as a duty to serve. And  
12 the thing that bothers me the most in the 11 months that  
13 I've been at the Commission, and I guess I would say is a  
14 global concern, Senator Mello asked me what it was that I  
15 was concerned -- or excuse me, it was Senator Petris who  
16 asked me what it was that in the book attracted Mr. Wilson,  
17 Governor Wilson's interest.

18           Well, I think the Governor was, among other  
19 things, attracted to the notion that I found and expressed a  
20 conviction that with regard to essential services that  
21 people cannot provide for themselves, that those services  
22 have about them what the common law used to call a business  
23 affected with the public interest, and that is was a  
24 business to be conducted in the public interest. I have yet  
25 to find as we go through the matter, the old monopolies we



1 well understood were disciplined by a duty to serve.

2           As these monopolies are being eroded by the forces  
3 of competition that technology and different thinking are  
4 bringing on line, much of it federal but also in other  
5 states, the question is what is the fate of that duty to  
6 serve? I have yet to have one of these competitors come  
7 into my office and say, "Commissioner, I understand that the  
8 classical monopoly had a certain obligation to serve poor  
9 people. Would you kindly tell me what discrete portion of  
10 that obligation now ought be mine, that I've entered into  
11 that market and I'm seeking a profit there, and I'd like to  
12 put that rock in my sack and walk out of your office." That  
13 hasn't happened. That's why I'm there, to try and make  
14 certain that those rocks get distributed.

15           And so in telecommunications, Senator, my global  
16 vision is that we are going to have to, if we're going to  
17 keep our public educated, if we're going to keep the cost of  
18 doing business as low as we can get it, if we're going to  
19 get information as broadly disseminated as it can be, we're  
20 going to have to be among the leaders, not just the  
21 followers in the world in getting the job done. But in  
22 getting the job done, I personally do not believe that there  
23 can be a simple resignation of government responsibility and  
24 say, well, let the public sector yield and the private  
25 sector completely take this matter over.



1 I think there is great impetus from the private  
2 sector to show us that classical ways of thinking about  
3 natural monopolies were wrong. But the classical concern  
4 that government evidenced about the fact that these services  
5 are ones that if you are cut out of the loop, you are  
6 condemned to a lesser life, that wasn't wrong, that was  
7 emphatically right.

8 And so the lesson, I think, or my job is to try  
9 and balance and learn on a day-by-day basis, because that's  
10 what this has been for me and will be on the day I leave to  
11 go back to the University, how you go about trying to  
12 continually rebalance that matter.

13 SENATOR ROSENTHAL: We touched briefly earlier on  
14 the concept of privacy --

15 MR. FESSLER: Yes.

16 SENATOR ROSENTHAL: -- and I kind of fold that  
17 into my concern about consumers generally and their  
18 protection and where that -- I guess my question is where  
19 does that rank on your priorities in terms of your looking  
20 at whatever's being presented at the PUC?

21 MR. FESSLER: As I said to Senator Petris, the  
22 issue of privacy, what Brandeis called the fundamental right  
23 to be left alone, is to me a very keen one. The area of the  
24 Public Utilities Commission that would have me interactive  
25 with that value judgment is in the area of







1 telecommunications, primarily.

2 But again, where I will come down ultimately on  
3 the issue of caller ID, I don't have an informed view, and  
4 so -- but that's where you're going to find out, I suppose.  
5 I mean the rubber will hit the road on that decision.

6 SENATOR ROSENTHAL: And finally, Mr. Chairman, I'm  
7 shortening this up somewhat, on utility diversification, I  
8 have been concerned about this form of deregulation and how  
9 it might hurt the rate payers.

10 MR. FESSLER: Sure.

11 SENATOR ROSENTHAL: There have been some cases of  
12 sweetheart deals, alleged and otherwise, there have been  
13 some concerns that I've raised about diversification in  
14 terms of a utility or a holding company buys something which  
15 loses money, how does that affect the utility in terms of  
16 its borrowings that you're now facing in terms of a  
17 situation with the gas company in southern California.

18 What's your view of the PUC's role concerning the  
19 protection of the rate payers from the risks of utility  
20 diversification and this deregulation which may in fact be  
21 hurting?

22 MR. FESSLER: I think it's a primary  
23 responsibility of the Public Utilities Commission to prevent  
24 cross subsidies and to police affiliate transactions. On  
25 the issue of affiliate transactions, I recently made a



1 little video tape in which I announced in essence that  
2 affiliate transactions were to be viewed with great  
3 skepticism, and that the abuse of rate payer interests by  
4 affiliate transactions would find me as tough as an old  
5 boiled owl. And that's how I feel. Those are critical  
6 areas of the Commission's ongoing responsibility.

7 VICE CHAIRMAN CRAVEN: Fine.

8 SENATOR ROSENTHAL: Thank you very much, Mr.  
9 Chairman. I have no further questions, just a final  
10 observation.

11 I believe that Mr. Fessler would be a good  
12 appointment to the PUC. We've had discussions. We don't  
13 always agree, and I'm not looking for agreement. I am  
14 looking for a process, and I think that we have in Dr.  
15 Fessler one who's also concerned about the process. And so  
16 with that, I thank you for permitting me this opportunity.

17 VICE CHAIRMAN CRAVEN: Thank you.

18 Mr. President?

19 CHAIRMAN ROBERTI: Yes, Senator Craven, I also  
20 intend to vote for Dr. Fessler. I think his qualifications  
21 are outstanding. Although we haven't dwelt on the point,  
22 even though I wasn't happy with his opposition to my two  
23 pieces of legislation, nevertheless --

24 (Laughter.)

25 CHAIRMAN ROBERTI: Number one, yes. Nevertheless,



1 there are a lot of people who cast votes against my  
2 legislation. We haven't dwelt on it, but Senators Petris  
3 and Rosenthal did raise it, and you're well aware of it, and  
4 that is identification of callers.

5 This is an enormous question, and just to throw in  
6 my two cents because it's the only time I have to bring it  
7 up at least before the confirmation, although, and that is  
8 that there really is a distinction in my mind as between  
9 someone who is a private party and a business. There are  
10 many businesses that no one has any option but to -- that a  
11 person has no option but to deal with that business, a  
12 utility for example.

13 MR. FESSLER: Yes.

14 CHAIRMAN ROBERTI: You have to make the phone  
15 call. Furthermore, under our laws, the businesses have to  
16 be open to everybody anyway for any number of reasons,  
17 nondiscrimination, or whatever. It would be a terrible  
18 shame that a person's making a phone call permanently puts  
19 them in the record, whatever the nature of the business is.  
20 As far as a private residence, that may be something else  
21 again.

22 I don't know if you can make those distinctions,  
23 but I think you could, technologically. And I tend to think  
24 it's a major difference as to somebody having to deal with  
25 the public in the intercourse of commerce and having a







1 record kept on them, whatever the reason, and, you know, any  
2 private resident just wanting to know who's bothering them.

3 MR. FESSLER: Yes. I thank you, Senator, for  
4 those views, and would -- well, it would be wrong to say  
5 commend it to your reading because you simply are too busy,  
6 but you would be interested in the treatment of some of  
7 these issues in Judge Lemke's proposed decision which is  
8 very very thoughtful. I have disagreed with thoughtful  
9 decisions of other administrative law judges, but they are  
10 among the best public servants we have.

11 CHAIRMAN ROBERTI: But if you do decide to open up  
12 the process to caller ID, as you know, I mean this becomes  
13 an issue of enormous moment.

14 MR. FESSLER: Yes.

15 CHAIRMAN ROBERTI: It could probably, you know, it  
16 might be the dominant issue of the year for all you know.  
17 It's that major.

18 VICE CHAIRMAN CRAVEN: Very good. Thank you.

19 There being no further questions, Senator Beverly  
20 moves --

21 SENATOR BEVERLY: Move we recommend confirmation.

22 VICE CHAIRMAN CRAVEN: Call the roll.

23 RULES COMMITTEE SECRETARY WEBB: Senator Beverly.

24 SENATOR BEVERLY: Aye.

25 RULES COMMITTEE SECRETARY WEBB: Senator Mello.



1 SENATOR MELLO: Aye.

2 RULES COMMITTEE SECRETARY WEBB: Senator Petris.

3 SENATOR PETRIS: Aye.

4 RULES COMMITTEE SECRETARY WEBB: Senator Craven.

5 VICE CHAIRMAN CRAVEN: Aye.

6 RULES COMMITTEE SECRETARY WEBB: Senator Roberti.

7 CHAIRMAN ROBERTI: Aye.

8 RULES COMMITTEE SECRETARY WEBB: Five to zero.

9 VICE CHAIRMAN CRAVEN: It's unanimous. Five,  
10 zero.

11 Congratulations. Thank you very much.

12 MR. FESSLER: Thank you, Senator.

13 VICE CHAIRMAN CRAVEN: We're going to recess until  
14 a quarter after four, at which time we will reconvene.

15 (Thereupon a recess was taken.)  
16  
17  
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1 VICE CHAIRMAN CRAVEN: I'd like to call the  
2 meeting to order. Next on the appointee list is Timothy L.  
3 Coyle, Director of Housing and Community Development.

4 Mr. Coyle.

5 SENATOR MELLO: Mr. Chairman, may I speak?

6 VICE CHAIRMAN CRAVEN: Senator Mello.

7 SENATOR MELLO: May I make a brief statement  
8 before we start at this time?

9 VICE CHAIRMAN CRAVEN: Senator Mello.

10 SENATOR MELLO: I have asked Senator Roberti and  
11 Senator Petris for their support. I do plan to ask the  
12 Committee to put this confirmation hearing over, mainly  
13 because there have been a lot of questions come in, which I  
14 just had this this morning at a meeting with respect to the  
15 Emergency Shelter Program from all over the state. We've  
16 gone through the earthquake in my area, and people are still  
17 waiting. They get told that they have been approved for  
18 this money, and then they run into stiff opposition from the  
19 state. And I've asked them this morning to respond back to  
20 these questions and see if we can't get something going.

21 Now, I know that Senator Roberti has some concerns  
22 also from other parts of California, and these concerns have  
23 been raised that he is not aware of, but apparently this  
24 morning I gave you a list of them from Los Angeles County,  
25 also a group of people which is in my district, two or three





1 American service groups, United Way and Monterey Peninsula,  
2 people assisting the homeless, Ukiah, Peninsula Outreach,  
3 that's in Seaside, Mental Health Association of San Mateo  
4 County, and because he is in charge of the Emergency Shelter  
5 Program which provides for construction rehabilitation and  
6 shelters for the homeless, the first month's rent, the  
7 security deposits, there's just a tremendous amount of  
8 complaints that have come up and I think we would best get  
9 answers to these.

10 At this point I'm not opposing Mr. Coyle at all, I  
11 had planned to support him. But when these came up it  
12 raised a lot of questions. And as I asked Senator Roberti,  
13 and I'd like to have him respond if he -- to save time, I  
14 think it would be wise if we just make a decision now to put  
15 him over, or if we don't --

16 VICE CHAIRMAN CRAVEN: Mr. President, the request  
17 is to hold it for one week.

18 CHAIRMAN ROBERTI: Yes. Unfortunately, next  
19 Wednesday we aren't going to be here, are we? We are here.  
20 We are here. That's right. It was another Wednesday then.  
21 Excuse me.

22 VICE CHAIRMAN CRAVEN: Where are we going?

23 RULES COMMITTEE SECRETARY WEBB: We are going to  
24 be here. The next Wednesday is fine.

25 CHAIRMAN ROBERTI: The next Wednesday's fine.



1 Next Wednesday is fine.

2 VICE CHAIRMAN CRAVEN: Very well. Senator Mello,  
3 while you're --

4 SENATOR MELLO: Hold it. Let me clarify. The  
5 next Wednesday is February 12th, Lincoln's Birthday.

6 RULES COMMITTEE SECRETARY WEBB: February 5th.

7 CHAIRMAN ROBERTI: That's what I had thought too,  
8 Senator. We're both wrong.

9 SENATOR MELLO: I'm talking about the next  
10 Wednesday after next Wednesday.

11 CHAIRMAN ROBERTI: The problem is that is  
12 February 12th, the holiday. That is the problem.

13 SENATOR MELLO: His date for serving one year  
14 would be March the 4th, so we do have time.

15 CHAIRMAN ROBERTI: How long do you want to put  
16 this over?

17 SENATOR MELLO: Well, I want to get some answers  
18 from the people in my district especially and the ones that  
19 are out of state, and I want him to respond to why --

20 CHAIRMAN ROBERTI: Well, then, what about the  
21 Tuesday before Lincoln's birthday, what about that?

22 SENATOR MELLO: All right. In the morning -- can  
23 we meet in the morning?

24 CHAIRMAN ROBERTI: We'll meet on the Tuesday  
25 before Lincoln's birthday, which is February --



1 VICE CHAIRMAN CRAVEN: Is that the 11th?

2 CHAIRMAN ROBERTI: -- 11th.

3 SENATOR MELLO: Yeah, I --

4 VICE CHAIRMAN CRAVEN: Eleven, February.

5 SENATOR MELLO: I have to leave that afternoon  
6 about three o'clock. If we could do --

7 CHAIRMAN ROBERTI: Well, we will put Mr. Coyle and  
8 Mr. Lockwood's appointments, both --

9 SENATOR MELLO: Fine.

10 CHAIRMAN ROBERTI: -- as a priority.

11 VICE CHAIRMAN CRAVEN: Okay. So although we have  
12 not yet mentioned Mr. Lockwood, are we going to include him  
13 with Mr. Coyle?

14 CHAIRMAN ROBERTI: Senator Henry -- Senator  
15 Mello's going to make the same observation on that.

16 SENATOR MELLO: We'll take these one at a time.

17 CHAIRMAN ROBERTI: We'll take them up one at a  
18 time because I think he wants to address the issue as it  
19 concerns Mr. Lockwood. I have to leave right now, but so  
20 you know --

21 VICE CHAIRMAN CRAVEN: Very well.

22 CHAIRMAN ROBERTI: -- what I want to do, we would  
23 do them both on the 11th.

24 VICE CHAIRMAN CRAVEN: Same date?

25 CHAIRMAN ROBERTI: Right.





1 VICE CHAIRMAN CRAVEN: Very well. Do you want to  
2 schedule a time for the meeting? Would it be an afternoon  
3 meeting as usual, or would --

4 CHAIRMAN ROBERTI: It's got to be a morning --

5 VICE CHAIRMAN CRAVEN: Well, that's why I  
6 mention --

7 CHAIRMAN ROBERTI: -- it's got to be a morning  
8 meeting. On Tuesday I think I'm free, I don't know about  
9 everybody else.

10 VICE CHAIRMAN CRAVEN: Well, we can become free.  
11 That's no problem.

12 CHAIRMAN ROBERTI: Say 9:30 in the morning,  
13 Tuesday, February 11th.

14 VICE CHAIRMAN CRAVEN: All right. Okay. Very  
15 good. Thank you.

16 So we now have a motion to put over Messrs. Coyle  
17 and Lockwood until 9:30 on the 11th of February for their  
18 hearing.

19 Is there any objection?

20 So ordered.

21 Thank you, John. I appreciate it.

22 Next is Mr. Zolin, Director of Motor Vehicles.

23 I don't think anybody's going to put you over,  
24 Frank, hopefully not. You've had an age change since you've  
25 been here, have you not?



1 (Laughter.)

2 MR. ZOLIN: Thank you, Senator Craven, Senator  
3 Mello, Senator Beverly, Senator Petris.

4 It's a pleasure to be here this afternoon. I  
5 appreciate the opportunity to answer your questions and  
6 summarize my background and experience.

7 VICE CHAIRMAN CRAVEN: Well, fine. Why don't you  
8 do that and tell us why you feel that you're qualified for  
9 this position?

10 MR. ZOLIN: Thank you, sir. I'm a career public  
11 servant. I've spent over 34 years in public service  
12 starting with the City of Pasadena, City Manager's office,  
13 32 years with Los Angeles County, and the last 11 months  
14 with DMV.

15 I spent at least 24 years of my career in  
16 supervising operations and programs that provide direct  
17 service to the public in the Los Angeles County Welfare  
18 Department, the Department of Public Social Services. I was  
19 one of the chief deputies responsible for administration in  
20 that regard, and I had the obligation and responsibility to  
21 send out all the welfare payments.

22 I was also responsible to recruit and train all  
23 personnel in DPSS. That was, I think, my first operational  
24 experience when I had to deal with a culturally diverse  
25 customer population and recruit and train a workforce that



1 mirrored the population we served.

2 I moved on from Welfare after approximately 15  
3 months and spent 14 years as the executive officer and jury  
4 commissioner of the Los Angeles Superior Court. In that  
5 position, I was a county department head and had full  
6 responsibility for all our operations which entailed budget  
7 administration, a completely independent personnel system,  
8 and facility acquisition.

9 I'm proud to say during that period of time I did  
10 develop a very, I think, effective personnel system, an  
11 effective affirmative action program. I also modernized and  
12 automated our jury selection system to assure that we did  
13 pick jurors at random. I was also responsible for the  
14 development and construction of approximately 12 major court  
15 facilities. I feel that experience did qualify me for this  
16 position.

17 During the last 11 months, I see great functional  
18 similarities between DMV and the court system. Both  
19 departments have a large clerical staff that must be able to  
20 communicate effectively and serve a diverse population very  
21 effectively. Both departments maintain important records  
22 that are used by a variety of agencies. The automation of  
23 DMV records and our ability to serve other agencies and the  
24 public with those records is very essential to our success.

25 I feel that I can maintain and improve the broad







1 range of services and programs now administered by DMV.  
2 They range from our child care center to our data base  
3 redevelopment project to greater use of technology.

4 I'd be more than happy to answer any specific  
5 questions you have.

6 VICE CHAIRMAN CRAVEN: Thank you very much, Mr.  
7 Zolin.

8 Senator Petris.

9 SENATOR PETRIS: My district office has been  
10 flooded with calls lately about having to pay a fine for  
11 late payment of the registration, and they say they never  
12 got anything in the mail. They used to get -- we all used  
13 to get a notice in the mail with a bill, and when they  
14 called the Department, they were told, "Well, we're not  
15 mailing those out. It's up to you to call us and ask us  
16 whatever information you want."

17 Can you tell us something about that?

18 MR. ZOLIN: Yes. I'm glad to respond to that  
19 question. I am also concerned with those complaints. We've  
20 investigated those complaints and have drawn the following  
21 conclusions.

22 First of all, we investigated and reviewed our  
23 mail program. We do mail notices that registration is due.  
24 In fact, in recent months we've improved our mail system  
25 because we're using a regular zip code plus four digits. So



1 I am confident that our mail delivery is as efficient and as  
2 effective as it ever has been.

3 However, we do get about 1.6 notices that we've --  
4 1.6 million notices that we mail annually that are returned  
5 for improper address or being misaddressed. So there are a  
6 number of people that do not receive their notices. Perhaps  
7 -- we think our system's airtight, but perhaps we even fail  
8 to notify some people, mail the notices. But I'm confident  
9 that 99 percent of the people are receiving their notices in  
10 a timely fashion.

11 We looked at our mail schedule. We average  
12 approximately 45 days from the day we mail the notice until  
13 the payment is due, the registration is due. It's never  
14 fallen below 35 days, and never been more than 52 days on  
15 the mail cycle. So we feel the mechanics of mailing the  
16 notices have been as effective or more effective than they  
17 ever have been.

18 We think that two factors have influenced the  
19 public complaint. Number one, the fees have gone up  
20 pursuant to statute, and secondly, the penalty has been  
21 increased from 20 percent of the fee for late payment to 40  
22 percent. So we believe that the combination of a higher fee  
23 and the higher penalty is truly what is generating this  
24 level of complaint.

25 The technical interpretation of the law as I



1 understand it is that the citizen is obligated to renew  
2 their registration on the due date. Our notice is a  
3 courtesy reminder, but if they fail to receive the notice,  
4 it does not relieve the citizen of the obligation to make  
5 the payment.

6 Now, we'd be more than happy to work with any way  
7 to adjust that problem, but our conclusion at this time is  
8 that is the source of the complaint. I'd be more than happy  
9 to pursue any suggestion or any idea you have for a better  
10 analysis.

11 SENATOR PETRIS: Well, what struck me about it was  
12 that if you have that many being mailed out, there's always  
13 going to be a certain percentage that doesn't --

14 MR. ZOLIN: Yes.

15 SENATOR PETRIS: -- get through, but we've never  
16 had calls like that before. They all seemed to come in this  
17 one go around. And secondly, they were actually told by the  
18 district office that they're not mailing notices. It's --

19 MR. ZOLIN: Yeah.

20 SENATOR PETRIS: -- up to you to know when it's  
21 due or call the Department to get information.

22 MR. ZOLIN: I believe whoever made that statement  
23 was mistaken. We are mailing notices at the same rate we  
24 always have.

25 SENATOR PETRIS: Maybe one of your --





1 MR. ZOLIN: I believe we mail 24 million notices a  
2 year to new car registrants and another 2.6 million to the  
3 plan non-operation vehicles. So we're mailing twenty-six,  
4 twenty-seven million notices a year.

5 SENATOR PETRIS: Do they all come out of  
6 Sacramento, the notices?

7 MR. ZOLIN: Yes, they do.

8 SENATOR PETRIS: Well, I think --

9 MR. ZOLIN: It's a highly automated system.

10 SENATOR PETRIS: Well, I think we need to have  
11 that checked out.

12 MR. ZOLIN: I'd be happy to take another look at  
13 it and --

14 SENATOR PETRIS: Thank you.

15 VICE CHAIRMAN CRAVEN: Fine. Senator Mello.

16 SENATOR MELLO: I just have one question and that  
17 is do you continue to seek authority to administer blood  
18 tests to young people when they come in to get their  
19 driver's license?

20 MR. ZOLIN: There is a legislative proposal under  
21 consideration that that be done, yes, Senator.

22 SENATOR MELLO: I think the blood testing is --  
23 we've allowed blood testing when there's a presumption of  
24 use of alcohol by a person, you know, driving a car or drug  
25 testing. Does this mean that there'd be no presumption of



1 any use or abuse of any alcohol or anything. You're just  
2 going to test people who come in for a driver's license  
3 without any evidence that they've --

4 MR. ZOLIN: I believe the provisions of that  
5 proposed legislation apply only to youngsters between the  
6 age of 16 and 18 that now receive provisional licenses for  
7 the driving privilege. It would be a sample testing to  
8 determine if they have utilized drugs.

9 I believe the theory behind it is there are many  
10 youngsters at risk that are sort of on the fence as to  
11 whether they will abuse a substance, and that such testing  
12 may allow them to resist peer group pressure and say no to  
13 drugs. I believe that is the theory of the proponents of  
14 that legislation.

15 SENATOR MELLO: Very good. Well, you say the  
16 proponents of that legislation. I hear it came from you.  
17 You announced this at a conference up in last December.

18 MR. ZOLIN: That's correct. I did indicate that  
19 the administration was considering such legislation.

20 SENATOR MELLO: Yeah. Well, this will have to  
21 rise or fall on its merit, but it just strikes me as moving  
22 away from the Constitution which requires -- presumes your  
23 innocence until proven guilty, and just a random -- I'm  
24 opposed to random testing, per se, unless there's reason to  
25 do it.



1 MR. ZOLIN: I certainly understand that position,  
2 and I think that touches on a --

3 SENATOR MELLO: Alcohol and drugs don't stop --

4 MR. ZOLIN: -- broad issue.

5 SENATOR MELLO: -- at age 16 to 18. I mean, if  
6 you're going to do this to people in that age group, just  
7 why not do it across the board? But, I mean, I'm not  
8 supporting that with some good cause, I think, and that  
9 could be justified.

10 MR. ZOLIN: I understand your concern, and during  
11 the 11 months that I've been with DMV, I've had an  
12 opportunity to kind of review the history of the Department,  
13 and I see where the role of the Department as the agency to  
14 register vehicles and protect titles of vehicles and to  
15 license drivers for competency is slowly changing, and the  
16 DMV is moving in an area of really being a collection  
17 agency, and --

18 SENATOR MELLO: But the point --

19 MR. ZOLIN: -- involving other programs not  
20 directly related to the driving privilege or driver safety.

21 SENATOR MELLO: But they could be on an acute case  
22 of alcoholism, and then sober up knowing they're going to  
23 come in for their driver's license test, and then go right  
24 back to drinking, you know, one or two days later.

25 I just don't see the wisdom here of just doing it





1 without some sign that they are inebriated or having used  
2 drugs or vehicle. I think most importantly is get drinking  
3 drivers off our highways --

4 MR. ZOLIN: Yeah.

5 SENATOR MELLO: -- and get them out from behind  
6 the cars. But I don't think you're going to accomplish that  
7 by just testing a certain age group without any evidence  
8 that they have committed any infringement upon the process.

9 MR. ZOLIN: I believe the proposal is to test for  
10 all substance abuse, not merely alcohol, but any residual  
11 drugs.

12 SENATOR MELLO: Thank you, Mr. Chairman.

13 VICE CHAIRMAN CRAVEN: You're welcome.

14 Senator Lockyer, you had a question of Mr. Zolin?

15 SENATOR LOCKYER: Mr. Zolin, I wanted to make sure  
16 that we, for the record, got some explicit comments on the  
17 privacy issue that we've had an opportunity to discuss a  
18 couple of times. For the benefit of Committee Members that  
19 were not present, and I don't mean to start out in a  
20 negative way, but I was alarmed as you know, and so if I can  
21 summarize that discussion.

22 The Senate Judiciary Committee conducted a hearing  
23 on privacy during the fall of a bundle of issues that might  
24 come up, and one of the matters that was discussed was the  
25 legislation, I believe it was maybe Senator Morgan's bill



1 and there were some others, that prohibit -- that allowed  
2 use of a social security number by DMV for purposes of  
3 pursuing child support payments that were not made in timely  
4 ways, and so that information would be collected by DMV.  
5 However, the law specifically said that that social security  
6 number should not appear on the driver's license. And  
7 during our discussion Mr. Zolin mentioned that it didn't  
8 prohibit the inclusion of that information on the mag strip.

9 Now, to expedite or facilitate ticket writing and  
10 other matters, there's a magnetic strip like on a credit  
11 card on the back of your driver's license, and there's space  
12 there for information that could, perhaps, include the  
13 social security number.

14 Now, I don't read the law that way, and let me  
15 just cite it. It says, "An applicant," that is a DMV  
16 applicant, "social security account number shall not be  
17 included by the Department on any driver's license,  
18 identification card, registration, or any other document  
19 issued by the Department." Now, I would argue that that  
20 includes the mag strip, and that that should not be  
21 routinely available to any merchant that has a reader for  
22 those credit card type devices.

23 I would like you to talk about it and tell us what  
24 your current view is both about the law and the policy.

25 MR. ZOLIN: Well, I think we're talking about two



1 different bills. Certainly, Senator Morgan's bill, SB 395,  
2 was the bill relating to the collection of child support.

3 SENATOR LOCKYER: Right.

4 MR. ZOLIN: You also had Assembly Bill 1297  
5 authored by Assemblyman Isenberg, which also requires the  
6 Department to collect social security numbers.

7 To get right to the gist of your question, I  
8 personally support the idea that we maintain the  
9 confidentiality of social security numbers, and that's a  
10 very critical issue. To resolve any questions regarding the  
11 information that's on the front of the driver's license and  
12 on the mag stripe, I'd be more than happy to work with you  
13 on legislation that would mandate the fact that no  
14 additional information appear on the mag stripe that is not  
15 on the front of the license.

16 I have administratively -- as you know, we've  
17 already started to collect social security numbers. We've  
18 administratively held them confidential. And there are some  
19 legal issues in terms of the collection and storage of  
20 social security numbers as they relate to federal  
21 regulations that we have not thoroughly explored, and we're  
22 conducting a study on that now. But I believe I share your  
23 concerns about confidentiality.

24 SENATOR LOCKYER: So it would not be your  
25 intention to include the social security number on the mag







1 strip or anywhere?

2 MR. ZOLIN: No. Or to release it any way to the  
3 public that isn't clearly authorized by law and the statutes  
4 that have been adopted here.

5 SENATOR LOCKYER: I'm happy to learn that's your  
6 current view.

7 Could we probably expect then something formal in  
8 the way of an executive order or -- rather an administrative  
9 order --

10 MR. ZOLIN: I believe --

11 SENATOR LOCKYER: -- in the interim until we get a  
12 new --

13 MR. ZOLIN: Certainly. I'd be happy to develop  
14 the appropriate administrative directive or order.

15 VICE CHAIRMAN CRAVEN: Thank you very much, and  
16 thank you, Senator.

17 SENATOR LOCKYER: The only other thing I might add  
18 is as one who works with the judicial branch of government,  
19 and you, of course, have heard that Mr. Zolin has long  
20 experience there, particularly as --

21 VICE CHAIRMAN CRAVEN: Yes, I have.

22 SENATOR LOCKYER: -- LA administrator, his  
23 reputation is outstanding as a judicial administrator.

24 VICE CHAIRMAN CRAVEN: Very good. Thank you.

25 MR. ZOLIN: Thank you, Senator.



1 VICE CHAIRMAN CRAVEN: Is there anyone in the  
2 audience who wishes to make a comment relative to this  
3 nomination?

4 Jerry?

5 MR. MATTHEWS: Jerry Matthews with the California  
6 State Fireman's Association. We're not a global  
7 organization, just statewide, but we've had two occasions to  
8 work with Senator -- I mean Director Zolin, and we found  
9 it's like a breath of fresh air after the number of years  
10 with previous administrations. It's really been a pleasure  
11 for us to work for him, and we wholeheartedly support his  
12 confirmation.

13 VICE CHAIRMAN CRAVEN: Fine. Thank you very much.  
14 Anyone else?

15 Very well.

16 SENATOR BEVERLY: Move we recommend confirmation.

17 VICE CHAIRMAN CRAVEN: Senator Beverly moves.

18 Call the role, please.

19 RULES COMMITTEE SECRETARY WEBB: Senator Beverly.

20 SENATOR BEVERLY: Aye.

21 RULES COMMITTEE SECRETARY WEBB: Senator Mello.

22 SENATOR MELLO: Aye.

23 RULES COMMITTEE SECRETARY WEBB: Senator Petris.

24 SENATOR PETRIS: Aye.

25 RULES COMMITTEE SECRETARY WEBB: Senator Craven.



1 VICE CHAIRMAN CRAVEN: Aye.

2 RULES COMMITTEE SECRETARY WEBB: Senator Roberti.

3 Four to zero.

4 VICE CHAIRMAN CRAVEN: Four to zero. The measure  
5 passes.

6 Congratulations.

7 MR. ZOLIN: Thank you. Thank you very much,  
8 Senators.

9 (Thereupon the January 29th meeting of the  
10 California State Senate Rules Committee  
11 Confirmation Hearings of Daniel Fessler and  
12 Frank S. Zolin was adjourned at 4:40 p.m.)  
13  
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CERTIFICATE OF SHORTHAND REPORTER

I, RONALD J. PETERS a Certified Shorthand Reporter, of the State of California, do hereby certify that I am a disinterested person herein; that I reported the foregoing California State Senate Rules Committee Confirmation Hearings of Daniel Fessler and Frank S. Zolin in shorthand and thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand  
this 26<sup>th</sup> day of February, 1992

  
\_\_\_\_\_  
Ronald J. Peters  
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STATE OF CALIFORNIA

LEGISLATIVE



STATE CAPITOL  
ROOM 113  
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CALIFORNIA STATE SENATE

RULES COMMITTEE

CONFIRMATION HEARING

OF

DOUGLAS G. ARNOLD

RICHARD CARPENTER

THOMAS P. NAGLE

IRENE RAYMUNDO

ORIGINAL

STATE CAPITOL

Room 113

Sacramento, California

WEDNESDAY, FEBRUARY 5, 1992

3:00 P.M.

Ronald J. Peters  
Certified Shorthand Reporter  
License Number 2780



SENATE RULES COMMITTEE MEMBERS PRESENT

Senator David Roberti, Chairman

Senator William Craven, Vice Chairman

Senator Robert Beverly

Senator Henry Mello

Senator Nicholas Petris

ALSO PRESENT

Mr. Rick Rollens, Secretary of the Senate

Ms. Nancy Michel, Consultant to the Rules Committee

Ms. Patricia Webb, Secretary to the Rules Committee



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PROCEEDINGS

VICE CHAIRMAN CRAVEN: Now, Governor's Appointees. Appearing today first is Douglas G. Arnold, Chief Deputy Director, Department of Developmental Services.

Mr. Arnold.

Mr. Arnold, we ask all the nominees the same question. And that is to have you tell us why you feel you're qualified for this important post.

MR. ARNOLD: Thank you, Senator Craven, Members of the Committee. I'm Douglas Arnold.

I appreciate the opportunity to appear before you this afternoon for your consideration of my appointment as Chief Deputy Director of the Department of Developmental Services.

My career in State government now covers a little more than twenty-five years. And during that time I have worked for five different State departments and had the opportunity to become involved with a variety of programs, primarily in the health and welfare area.

I started my career with the State at the Department of Finance in 1966. I was assigned to audits of various State institutions serving the mentally ill and developmentally disabled, as well as a number of the State's correctional facilities.

This exposure provided me with, I think, an



1 excellent grounding in the State's fiscal systems as well as  
2 direct exposure to the programs for the individuals served  
3 at these institutions.

4 For the next six years I worked for the Department  
5 of Mental Hygiene and then the Department of Health,  
6 starting as a budget analyst and eventually serving as Chief  
7 of the budget section in both departments. My work during  
8 that time provided me an opportunity to become well versed  
9 in the State's budget process, as well as have direct  
10 involvement with implementation of significant legislation,  
11 such as the Lanterman, Petris, Short Act, which resulted in  
12 some dramatic changes in programs at the State and local  
13 level serving the mentally ill.

14 My first career executive assignment, or CEA  
15 position, was in 1976 as Chief of the Developmental Services  
16 Program in the Department of Health. My responsibilities  
17 included, at that time, the administration of the Regional  
18 Center Program and a very large State-operated Case  
19 Management program.

20 When the Department of Health was split up and the  
21 Department of Developmental Services formed in 1978, I  
22 served as its first Deputy Director for Administration and  
23 had responsibility for all of the financial operations and  
24 support services in the Department.

25 In early 1982, I joined the Department of Mental





1 Health as their Chief Deputy Director, and served in that  
2 capacity until the change of Administration.

3 In January of 1983, at the beginning of the prior  
4 Administration, I was asked to serve as the Interim Director  
5 of the Department of Mental Health until a permanent  
6 Director was appointed.

7 During the ensuing eight years in the Department  
8 of Mental Health, I held the positions of Deputy Director  
9 for Administration, Deputy Director of Community Services,  
10 and Deputy Director of the Division of State Hospitals.

11 At the end of the Administration, I also served a  
12 second stint as Chief Deputy Director and Acting Director.

13 In February of last year, I was contacted by the  
14 newly appointed Director of the Department of Developmental  
15 Services, Mr. Danny Amundson, whom I'd first met when he was  
16 a staff person to Assemblyman Frank Lanterman, and he  
17 recruited me for the position that brings me before you  
18 today.

19 I've developed, over the years, a strong interest  
20 in the programs of mental health and developmental services,  
21 which in many respects are very similar. I've also worked  
22 closely with the constituencies in both the programs. And I  
23 bring, I think, an understanding and sensitivity to their  
24 needs.

25 I believe that my extensive experience in



1 positions with administrative as well as programmatic areas  
2 has prepared me well for this position.

3 I tried to keep my statement brief. Hopefully,  
4 not too brief. And I'll be happy to respond to any  
5 questions you might have.

6 VICE CHAIRMAN CRAVEN: Thank you very much, Mr.  
7 Arnold.

8 Any questions by any of the Members?

9 Anyone in the audience wish to appear in support  
10 or opposition?

11 There appears to be none.

12 SENATOR PETRIS: Move.

13 VICE CHAIRMAN CRAVEN: Senator Petris moves -- oh,  
14 I'm sorry, you did say move, Nick?

15 SENATOR PETRIS: Yes.

16 VICE CHAIRMAN CRAVEN: Senator Petris moves. Call  
17 the roll, please.

18 RULES COMMITTEE SECRETARY WEBB: Senator Beverly.

19 SENATOR BEVERLY: Aye.

20 RULES COMMITTEE SECRETARY WEBB: Senator Mello.

21 SENATOR MELLO: Aye.

22 RULES COMMITTEE SECRETARY WEBB: Senator Petris.

23 SENATOR PETRIS: Aye.

24 RULES COMMITTEE SECRETARY WEBB: Senator Craven.

25 VICE CHAIRMAN CRAVEN: Aye.



1 RULES COMMITTEE SECRETARY WEBB: Senator Roberti.  
2 Four to zero.

3 MR. ARNOLD: Thank you very much.

4 VICE CHAIRMAN CRAVEN: Congratulations. Thank  
5 you.

6 VICE CHAIRMAN CRAVEN: I want to go to item seven  
7 here, if I may. We have sort of a logistical problem on  
8 this item.

9 Senator Torres is Chairman of the Senate Committee  
10 on Insurance Claims and Corporations, and requests  
11 authorization to waive Joint Rule 62A, which is the four-day  
12 file rule, in order that they may meet today at 4:00 o'clock  
13 to hear ACR 84, Sher.

14 Rick?

15 SENATE SECRETARY ROLLENS: Senators, this  
16 resolution by Mr. Sher and Margolin deals with the  
17 Proposition 103 rebate regulations that just request the  
18 Governor to overturn the latest rejection of the proposed  
19 Prop 13 rebate regulations issued by the Insurance  
20 Commission, in order that the insurance consumers may  
21 receive insurance rebates.

22 This resolution has been assigned to the Insurance  
23 Committee, and because of the timeliness of the resolution,  
24 Senator Torres would like an opportunity to have that  
25 resolution heard today in the Senate Insurance Committee.







1           There is a file notice in today. They just did  
2 not make the four-day file notice.

3           VICE CHAIRMAN CRAVEN: Okay. Senator Mello moves?  
4 Any objection?

5           Call the roll.

6           RULES COMMITTEE SECRETARY WEBB: Senator Beverly.

7           SENATOR BEVERLY: Aye.

8           RULES COMMITTEE SECRETARY WEBB: Senator Mello.

9           SENATOR MELLO: Aye.

10          RULES COMMITTEE SECRETARY WEBB: Senator Petris.

11          SENATOR PETRIS: Aye.

12          RULES COMMITTEE SECRETARY WEBB: Senator Craven.

13          VICE CHAIRMAN CRAVEN: Aye.

14          RULES COMMITTEE SECRETARY WEBB: Senator Roberti.

15          Four to zero.

16          VICE CHAIRMAN CRAVEN: Very well. For those of  
17 you in the audience, we did put over Mr. Shumway for the  
18 next meeting, I guess. Is that right, Pat?

19          RULES COMMITTEE SECRETARY WEBB: That's correct.

20          VICE CHAIRMAN CRAVEN: Next Tuesday. So if any of  
21 you are here for that, why, you're going to have a long  
22 wait.

23          Next is Richard Carpenter, Member, State Personnel  
24 Board. Mr. Richard Carpenter is known as Bud Carpenter to  
25 most of you.



1 MR. CARPENTER: Thank you, Mr. Chairman. For  
2 those of you who know me, you know some of my background.

3 I first went to work for the League of California  
4 Cities in 1939 as assistant legal counsel. At that time,  
5 Louis Burke, who later became a California Supreme Court  
6 Justice, was the League's legal counsel. My first work was  
7 in preparing personnel civil service enabling ordinances,  
8 model ordinances, for cities, with Louie Burke. And that  
9 goes back that far, and, of course, revising them from time  
10 to time.

11 My duties also included responding to inquiries  
12 from city attorneys and other city officials with respect to  
13 those types of subjects.

14 And later on, when I became the League's Executive  
15 Director and General Counsel, I also represented cities in  
16 the Legislature for a number of years, from '39 to 1973,  
17 when Don Benninghoven took over. At that time, I stayed as  
18 Director of Legislative Affairs for two years.

19 After that, I came back with the League in 1977 to  
20 do specifically employee labor relations work in putting out  
21 a newsletter. And I did that for the last fourteen years,  
22 until March of 1991.

23 And during that period of time, it was necessary  
24 of course, to keep current on all court decisions involving  
25 this subject. And I was the coordinator for many programs



1 involving how to avoid discriminatory types of charges and  
2 disciplinary actions.

3 And so I feel that in this area I did have the  
4 qualifications because this is largely the kind of work that  
5 I do now in reviewing proposed decisions of ALJ's on  
6 disciplinary actions and other appeals to the Personnel  
7 Board.

8 So, if you have any questions.

9 VICE CHAIRMAN CRAVEN: Very well. Any Members  
10 have any questions?

11 Is there anyone in the audience who wishes to  
12 speak in favor or opposition to the nominee?

13 Are you coming up, Common Cause?

14 (Thereupon, a short discussion was held off the  
15 record.)

16 SENATOR BEVERLY: One question Mr. Chairman.

17 VICE CHAIRMAN CRAVEN: Yes, Senator Beverly.

18 SENATOR BEVERLY: I just read that this term lasts  
19 until January, 2001.

20 MR. CARPENTER: That's a long time, Senator.

21 SENATOR BEVERLY: That's a long time.

22 MR. CARPENTER: I'm wondering what I'm going to be  
23 doing after that.

24 (Laughter.)

25 SENATOR MELLO: You'll be doing a double with







1 George Burns.

2 Mr. Chairman, if I may ask a question, though.

3 The only thing that comes to my mind. I remember  
4 hearing of Mr. Carpenter for many, many years. But in your  
5 job on the Personnel Board, one of the concerns we have  
6 looking at the numbers of under represented minority groups  
7 in jobs, and it just seems like the gap keeps growing  
8 further and further, especially the hispanic community that  
9 has now -- what's the percentage of population statewide?  
10 It's 22 percent, I believe.

11 But they account for about 6.6 percent of the  
12 jobs; and blacks a much smaller gap, and other asian  
13 population, and so forth.

14 I think the Personnel Board sets these standards,  
15 but I guess we're not getting the cooperation out in the  
16 departments I understand in their hiring.

17 And how do we keep these measures closer to  
18 following the law as far as --

19 MR. CARPENTER: We are responsible for the  
20 oversight for the affirmative action program. It's one of  
21 the major divisions and major functions of the Personnel  
22 Board. And like all of the other State agencies, if there  
23 is anything that's the problem there, Senator, I think it's  
24 largely because of budget restrictions.

25 But I think that they are doing more all the time.



1 I think that gap is improving. I don't know what figures  
2 that you're looking at, but our Executive Officer is here,  
3 Gloria Harmon, if you would wish to address that question to  
4 her.

5 SENATOR MELLO: No, you're the one that's being  
6 confirmed at this moment.

7 MR. CARPENTER: Right. I understand.

8 SENATOR MELLO: But then I think you've been --  
9 there's nothing on your record that I'm aware of. But I'm  
10 concerned about the whole process. I understand the Board  
11 has set a 25 percent goal of hiring hispanics in the  
12 departments. Yet the amount that are being hired are much  
13 lower than that.

14 And then you mentioned the budget constraints. If  
15 we say we have budget constraints, the problem will go on  
16 forever because it doesn't cost any more to hire somebody  
17 qualified from an ethnic group than it does somebody  
18 nonethnic, being their qualifications --

19 MR. CARPENTER: I understand that. But as far as  
20 I know, in the time that I've served on the Board, I would  
21 say of all of the functions that are performed by staff, the  
22 division that addresses the affirmative action program is  
23 one of the most active and is active in the sense of  
24 oversight to the other State departments to see what they  
25 are doing in closing that gap on the hispanics, on the





1 blacks, and on the others. The hispanics is the greatest,  
2 it's true.

3 SENATOR MELLO: Yeah. The oversight is one thing.  
4 I'm looking for compliance, and I just want to ask you if  
5 there's any legislation that you need in order to bring the  
6 State of California into compliance. Because we now have,  
7 the anglo population in California now has fallen below 50  
8 percent, and the hispanic population continues to go up and  
9 up and up, and the asian population has gone up a lot.

10 I think oversight is one thing. We just have to  
11 make sure that we are giving everyone a fair shake, making  
12 sure that they can get an education and qualify. But if  
13 they are qualified, we can't continue to turn them away  
14 there from employment, that's my point.

15 MR. CARPENTER: Well, if enforcement is necessary,  
16 I'm sure that it will be done by the staff insofar as they  
17 can.

18 SENATOR MELLO: Do you feel that there is enough  
19 laws in place now?

20 MR. CARPENTER: I do feel there are enough laws in  
21 place now, yes, Senator.

22 SENATOR MELLO: Well, I just invite you, as one  
23 Member, if there is some additional legislation needed, we'd  
24 be happy to look at it. Because its -- this Rules Committee  
25 said the same thing on even appointees going to





1 these important boards and commissions lack really the  
2 ethnic makeup of the State. And if that'll ever change, I  
3 really don't know.

4 MR. CARPENTER: Our president is Richard Chavez,  
5 as you know.

6 SENATOR MELLO: Yes. Okay. Thank you very much.

7 MR. CARPENTER: Thank you, Senator.

8 VICE CHAIRMAN CRAVEN: You're welcome.

9 Senator Beverly, move?

10 SENATOR BEVERLY: I want to make one brief  
11 comment. I've known Mr. Carpenter, what, at least 35 years.  
12 I first met him when I was a young planning commissioner and  
13 I knew him while I was a mayor, a city councilman, a city  
14 attorney, Assemblyman, and Senator. And he's been a  
15 gentleman and a competent individual. We should be  
16 delighted to have his services.

17 And I'm pleased to move the approval of the  
18 recommendation.

19 VICE CHAIRMAN CRAVEN: Very well. Senator Beverly  
20 moves.

21 I would like to add also my brief comment that  
22 back in the late 50's when I began in government, Mr.  
23 Carpenter was sort of like the beacon in the whole process,  
24 and I thought if I could ever learn 10 percent as much as he  
25 knows, I would be very, very successful. Well, I'm about



1 seven and a half percent now, and I'm feeling a lot better  
2 about it.

3 It's nice to find a fellow who began a career with  
4 the League as an attorney the year I graduated from high  
5 school. So, congratulations.

6 Call the roll.

7 RULES COMMITTEE SECRETARY WEBB: Senator Beverly.

8 SENATOR BEVERLY: Aye.

9 RULES COMMITTEE SECRETARY WEBB: Senator Mello.

10 SENATOR MELLO: Aye.

11 RULES COMMITTEE SECRETARY WEBB: Senator Petris.

12 SENATOR PETRIS: Aye.

13 RULES COMMITTEE SECRETARY WEBB: Senator Craven.

14 VICE CHAIRMAN CRAVEN: Aye.

15 RULES COMMITTEE SECRETARY WEBB: Senator Roberti.

16 Four to zero.

17 VICE CHAIRMAN CRAVEN: Congratulations Bud.

18 MR. CARPENTER: Thank you, gentlemen.

19 VICE CHAIRMAN CRAVEN: Thank you.

20 Next is Thomas P. Nagle, Director, Employment  
21 Development Department.

22 Welcome Mr. Nagle. Could you give us a little  
23 background on yourself, please?

24 MR. NAGLE: Thank you, Senator, Members.

25 I very briefly would like to go over a little bit



1 about my past experience, some of the accomplishments in the  
2 Employment Development Department in the past ten months  
3 during my tenure, and then some of the priorities that I  
4 have set for the Department in the future.

5 I began my career in 1968 as an Assistant Deputy  
6 for Social Programs for the City and County of San  
7 Francisco, in the administration of Joseph Alioto.

8 In that capacity I was involved in the development  
9 and direct administration of a variety of federal, state and  
10 local employment and training programs.

11 I had extensive dealings with business, labor,  
12 government and community based organizations.

13 I served as a senior analyst for the National  
14 League of Cities, U.S. Conference of Mayors in Washington  
15 DC, providing technical assistance to local elected  
16 officials on the management of federally funded employment  
17 programs at the local level.

18 I was also involved in the development of  
19 legislation, analysis of the federal budget, and regulatory  
20 advocacy on behalf of mayors and city council  
21 representatives throughout the United States.

22 I served as the Executive Director of the San  
23 Diego Regional Employment and Training Consortium, a joint  
24 powers agency of the City and County of San Diego,  
25 established for the purpose of management of employment and







1 training programs within that jurisdiction.

2 With an annual budget in excess of \$100 million,  
3 we contracted with scores of community based organizations,  
4 government agencies, labor unions, and others for the  
5 delivery of comprehensive employment and training services.

6 Our public service employment programs employed  
7 thousands of persons in full-time public and non-profit  
8 jobs.

9 Prior to my nomination by Governor Wilson in March  
10 of 1991, I served as Senior Vice President of the Hospital  
11 Council of Northern and Central California, a trade  
12 association representing over 230 acute care hospitals in 50  
13 counties.

14 In addition to legislative and regulatory analysis  
15 and advocacy, I was primarily responsible for the nonprofit  
16 health care research and development programs of the  
17 organization. This included the development and direct  
18 administration of regional cancer registries for the  
19 collection and application of cancer incidence data for  
20 epidemiological research, the development of a public,  
21 private prepaid capitated health insurance program for  
22 seasonal migrant farmworkers, research and educational  
23 programs dealing with the correlation between substance  
24 abuse and negative perinatal outcomes, and the development  
25 of a coordinated program between hospitals and community



1 colleges on improving employment opportunities for  
2 minorities in the health care field.

3 During the past ten months, as Director of the  
4 Employment Development Department, some of the highlights  
5 included the establishment and operation of the legislative  
6 re-employment center, provided outplacement, and a range of  
7 employment services for legislative staff displaced as a  
8 result of Proposition 140.

9 We have processed tens of thousands of claims and  
10 distributed hundreds of millions of dollars in unemployment  
11 insurance benefits to those eligible as a result of federal  
12 extended benefit legislation.

13 We have directly placed over 250,000 Californians  
14 in jobs in 1991 as part of our labor exchange function. We  
15 have successfully managed the State disability insurance  
16 program.

17 As a primary agent for the State in tax  
18 collection, we established the Employment Tax Problem  
19 Resolution Office to help protect the rights of employers in  
20 payroll tax matters.

21 We initiated new training and placement services  
22 for veterans, those recently released by the military,  
23 welfare recipients, incarcerated persons and older workers.

24 We implemented a public service employment program  
25 for the direct fulltime employment of an estimated 2,000





1 persons who lost their jobs as a result of the December,  
2 1990, freeze.

3 This \$9 million program of employment and training  
4 provided jobs and a payroll for those in need. It pumped  
5 millions of dollars of purchasing power into local economies  
6 and sustained a skilled agricultural workforce in  
7 preparation for the return of the citrus crop.

8 We distributed over \$61 million, including \$15  
9 million above and beyond our formula allocation, which we  
10 secured directly from the Secretary of Labor, for retraining  
11 of workers displaced as a result of plant closures and  
12 economic displacement.

13 This included workers in the timber, electronics,  
14 aerospace, food processing and manufacturing sectors.

15 We revised forms and notices of services and  
16 benefits to include spanish versions as well as other  
17 languages.

18 We initiated the Farmworkers Services Coordinating  
19 Council. This council, established by executive order of  
20 the Governor, is intended to formulate and promote uniform,  
21 coordinated, and consistent administrative policies and  
22 guidelines for State agencies dealing with farmworker  
23 service issues.

24 We worked closely with the Department of  
25 Rehabilitation and the Governor's Committee for the





1   Employment of the Disabled in the development of a  
2   comprehensive plan for the implementation of the Americans  
3   with Disabilities Act.

4           My priorities for the Employment Development  
5   Department include the efficient and timely execution of all  
6   federal and State legislative mandates and directions for  
7   the programs for which we are responsible; to maintain the  
8   integrity of the various benefit and trust funds under our  
9   supervision; to ensure the broadest range of participation  
10   in our programs to those eligible under the law; to initiate  
11   services and facilitate change for those in need; to invest  
12   the resources of the Department in cooperative efforts with  
13   other agencies to improve and make more comprehensive public  
14   service programs; to link the efforts of the Department in  
15   the broader issues of the economic development of the State;  
16   and finally, to infuse within the Department, a sense of  
17   service to the people of California, so that any person,  
18   regardless of their skill level or their status in life,  
19   regardless of the unemployment rate or economic conditions,  
20   that each person would be treated with efficiency, fairness,  
21   and dignity.

22           Thank you.

23           VICE CHAIRMAN CRAVEN:   Fine.   Thank you very much,  
24   Mr. Nagle.

25           Any comment by any of the Members of the



1 Committee?

2 Anyone in the audience wish to speak in favor or  
3 in opposition to the nominee?

4 There appears to be none.

5 Senator Petris.

6 Oh, somebody there? Oh, there is someone.

7 MR. ORTIZ: I would like to speak in favor of the  
8 nomination, if I may.

9 VICE CHAIRMAN CRAVEN: Fine. Why don't you come  
10 up and do so.

11 State your name, please.

12 MR. ORTIZ: Good afternoon. My name is George  
13 Ortiz. I'm the President of the California Human  
14 Development Corporation, which is located in Santa Rosa,  
15 California. And I'm also, at this point in time, Chairman  
16 of La Cooperativa Campensina de California, which is a  
17 federation of farmworker organizations throughout the State  
18 of California -- basically the rural areas, but also in the  
19 cities.

20 We got to know Tom Nagle through the emergency we  
21 had, which was created in December of 1990, with the freeze.  
22 And since we are very strong in support programs with  
23 farmworkers, we headed towards the Employment Development  
24 Department to see if we could get some assistance from that  
25 Department, since we found out that there were about 70,000





1 farmworkers out of work.

2 Mr. Nagle had just come on the job. As a matter  
3 of fact, when I met him in his office he was still  
4 unpacking. And I requested that he assist us with  
5 development of some kind of program in the area of public  
6 service employment, meaning that we thought that would be  
7 the quickest way to get farmworkers onto a paying job under  
8 the conditions of the emergency that existed all throughout  
9 the valley, or at least the counties that had been declared  
10 disaster areas. One of the worst were Fresno and Tulare  
11 counties.

12 We didn't know one another, so he had to basically  
13 trust what I was telling him. He didn't know us very well,  
14 and certainly that was the first time he and I had met.

15 What we did was we decided that we would first  
16 make an attempt to go to the Department of Labor and see if  
17 we could get some funds from them to support these families.  
18 That, to some great degree, fell through.

19 Where we got quick funds from was his Department,  
20 in the form of about \$5.6 million.

21 My organization, CHDC, became the primary  
22 contractor, and we in turn subcontracted with other  
23 farmworker groups throughout the valley and coastal areas  
24 where the freeze had really been, had wreaked havoc.

25 So what we did was, when we talked, within two





1 days he got back to me and told me, "Can you write a  
2 proposal", to see what it's like.

3 And we wrote a proposal quickly. We got our  
4 people together. We submitted the proposal to him at about  
5 4:00 p.m. on a Friday afternoon. Monday morning he was on  
6 the horn calling me up and saying, "It looks good. Let's go  
7 with it", and so we did.

8 The result of his commitment, and what I have to  
9 perceive as his courage, because he didn't know us too  
10 well -- I guess he asked around certain communities about  
11 us, but he still didn't know us -- was that we were able to  
12 place about 2,000 farmworkers into public service employment  
13 jobs with the \$5.6 million. That affected probably about  
14 9,000 farmworker family children and wives and husbands.

15 So we felt that he did a good job. We still do.  
16 We feel that his quick response to our need represented the  
17 best I've seen.

18 I've been in my job for 25 years now, working with  
19 farmworkers, and this is the best I've ever seen happen for  
20 us, at least from the Department of Employment.

21 He responded quickly and with good amounts of  
22 money. And we saved a lot of homes and a lot of hardship.

23 I have to say that the first time La Cooperativa  
24 Campensina really saw ourselves working very closely with  
25 Employment Development Department, it was never better.



1 This was the best I've ever seen happen between us. We  
2 really worked together to the benefit of the people that had  
3 been struck by the freeze.

4 And that's the story about Mr. Nagle.

5 VICE CHAIRMAN CRAVEN: Thank you very much, sir.  
6 Did you not write a letter to us?

7 MR. ORTIZ: Yes, sir.

8 VICE CHAIRMAN CRAVEN: All of the Members of the  
9 Committee have received that. And some of the things that  
10 you said were somewhat of a reiteration, which I recall  
11 having read the letter, which I'm sure my colleagues have  
12 too. We appreciate your being here. Thank you very much.

13 SENATOR PETRIS: May I ask a question?

14 VICE CHAIRMAN CRAVEN: Senator Petris.

15 SENATOR PETRIS: Can you tell me a little bit  
16 about La Cooperativa with respect to the contracts? You said  
17 you have contracts with different groups. What are those  
18 groups and what's the nature of the contracts?

19 MR. ORTIZ: Senator Petris, what brings us  
20 together is a common bond. From the Department of Labor,  
21 there's a national program for farmworkers in employment and  
22 training and placement. It's called 402. We call it  
23 Section 402. It's under the Job Training Partnership Act.  
24 And there's five of us in the State. We go from Colexico up  
25 to the Oregon border. And what we do is provide job



1 training and placement services to farmworkers.

2 We've been doing this for many, many years now.  
3 La Cooperativa Compensina is the federation that brings  
4 these groups together. It's an organization of these  
5 different groups.

6 SENATOR PETRIS: And you make contracts with  
7 different groups to cover certain areas? What do these  
8 contracts involve?

9 MR. ORTIZ: Beg pardon?

10 SENATOR PETRIS: You mentioned you make contracts  
11 with different groups.

12 MR. ORTIZ: Well, in the instant case --

13 SENATOR PETRIS: Employer groups to give training,  
14 or is it --

15 MR. ORTIZ: Yes. We do on-the-job training  
16 services, work experience services, classroom training  
17 services, supportive services. This is exclusively for the  
18 farmworker population in our State. And so we give a whole  
19 line of services to farmworkers as far as employment is  
20 concerned.

21 They're upgrading their skills, not only in  
22 agriculture, but also taking it to other jobs, non-  
23 agriculture jobs.

24 SENATOR PETRIS: Apart from the freeze problem,  
25 how many farmworkers have been put through this training







1 program over the years?

2 MR. ORTIZ: Well, we've been operating since  
3 approximately 1974. I couldn't give you an exact number  
4 right now, Senator, but it ranges in the hundreds of  
5 thousands for sure.

6 SENATOR PETRIS: Okay. Thank you.

7 MR. ORTIZ: You're welcome.

8 VICE CHAIRMAN CRAVEN: Very well.

9 Any further comment?

10 Senator Roberti?

11 CHAIRMAN ROBERTI: There are no further comments?  
12 Did we take oppositions?

13 VICE CHAIRMAN CRAVEN: We've asked for that.

14 CHAIRMAN ROBERTI: I am going to leave it with you  
15 until we get to the next one.

16 VICE CHAIRMAN CRAVEN: Very well, fine.

17 Senator Beverly?

18 SENATOR BEVERLY: Move we recommend approval of  
19 the confirmation.

20 VICE CHAIRMAN CRAVEN: Senator Beverly moves.

21 Call the roll.

22 RULES COMMITTEE SECRETARY WEBB: Senator Beverly.

23 SENATOR BEVERLY: Aye.

24 RULES COMMITTEE SECRETARY WEBB: Senator Mello.

25 SENATOR MELLO: Aye.



1 RULES COMMITTEE SECRETARY WEBB: Senator Petris.

2 SENATOR PETRIS: Aye.

3 RULES COMMITTEE SECRETARY WEBB: Senator Craven.

4 VICE CHAIRMAN CRAVEN: Aye.

5 RULES COMMITTEE SECRETARY WEBB: Senator Roberti.

6 CHAIRMAN ROBERTI: Aye.

7 RULES COMMITTEE SECRETARY WEBB: Five to zero.

8 VICE CHAIRMAN CRAVEN: Five to zero.

9 Congratulations, Mr. Nagle.

10 MR. NAGLE: Thank you.

11 VICE CHAIRMAN CRAVEN: Thank you both very much.

12 Senator Roberti, we have gone through the agenda  
13 with the exception of items 5 and 8.

14 CHAIRMAN ROBERTI: On the item number 5, the  
15 nomination of Irene Raymundo, Member of the Youthful  
16 Offender Parole Board.

17 Ms. Raymundo.

18 We'll ask you what we ask all the Governor's  
19 appointees, and that is why you feel you're qualified to  
20 assume this position.

21 MS. RAYMUNDO: Well, Mr. Chairman, Members of the  
22 Board. I'm going to be brief in my comments. I know you  
23 want to complete your day here.

24 My experience. I have worked for California as a  
25 State employee for approximately 20, 21 years.



1           The last four years I've worked for the California  
2 Department of Corrections, in charge of programs for  
3 inmates, including the arts in corrections program and  
4 community projects.

5           One of the most publicized projects that I was  
6 privileged to be a part of was the one in San Diego where  
7 the inmates actually clean all the trolley cars for the City  
8 of San Diego. It's a very publicized program.

9           Before that I worked with the Employment  
10 Development Department and I developed, monitored,  
11 supervised and managed programs for the unemployed and  
12 disadvantaged populations in San Diego for the last ten  
13 years.

14           Additionally, I've worked in the San Diego local  
15 community with youth programs, police review boards, and  
16 recently appointed by the City Manager in San Diego and the  
17 Chief of Police to the Blue Ribbon Committee to look at  
18 violent crime and to come up with some recommendations so  
19 that we could use our local resources to address some of the  
20 problems that are creating or that are happening out in our  
21 community.

22           And if you have any other questions, I'd like to  
23 answer them.

24           CHAIRMAN ROBERTI: Senator Mello.

25           SENATOR MELLO: I've noticed that you have an arts





1 degree from Fresno City College. The reason I ask that is  
2 that I helped start the arts in corrections program, which  
3 is now systemwide.

4 MS. RAYMUNDO: Yes.

5 SENATOR MELLO: I have a bill. I'm trying to get  
6 arts in the youthful offender program. And so far I haven't  
7 been successful. But maybe I've found an ally here, maybe I  
8 haven't, I don't know. I'd kind of like to ask you. You no  
9 doubt have heard of the program.

10 MS. RAYMUNDO: Yes, Senator Mello. I supervise  
11 the arts in corrections program at the Richard J. Donovan  
12 Correctional Facility. And we became part of the art  
13 community in San Diego. It was a very successful project.  
14 We did things like going into the city theater and actually  
15 charged money. We took inmates there. We had a  
16 performance. And we raised money for crime victims, the San  
17 Diego Crime Victims Fund. We've raised a lot of money  
18 through that type of event.

19 SENATOR MELLO: Do you also find that the  
20 recidivism rate for those who have gone through the program  
21 is much lower?

22 MS. RAYMUNDO: Yes, yes. That's been publicized.  
23 It does have an impact on the recidivism rate. It has  
24 lowered, of those people that have participated.

25 SENATOR MELLO: I think getting these young people



1 into such a program has been tried and proven and the  
2 Department of Corrections would certainly work even more  
3 advantageous, because I think they'd be more appreciable for  
4 the kind of arts programs that might turn around their whole  
5 lives.

6 MS. RAYMUNDO: The Youth Authority does have some  
7 art programs. I'm sure they could use more. I don't work  
8 for the Youth Authority. But they do have some programs  
9 that are very successful, and we see some of the results in  
10 our hearings because the wards come very proudly and display  
11 their work.

12 SENATOR MELLO: Well, we'll be talking to you in  
13 the future, then. Thank you.

14 MS. RAYMUNDO: I'll look forward to it.

15 VICE CHAIRMAN CRAVEN: Move.

16 CHAIRMAN ROBERTI: Senator Craven moves.

17 Any discussion or debate?

18 Is there any opposition in the audience?

19 Secretary will call the roll.

20 RULES COMMITTEE SECRETARY WEBB: Senator Beverly.

21 SENATOR BEVERLY: Aye.

22 RULES COMMITTEE SECRETARY WEBB: Senator Mello.

23 SENATOR MELLO: Aye.

24 RULES COMMITTEE SECRETARY WEBB: Senator Petris.

25 SENATOR PETRIS: Aye.



1 RULES COMMITTEE SECRETARY WEBB: Senator Craven.

2 VICE CHAIRMAN CRAVEN: Aye.

3 RULES COMMITTEE SECRETARY WEBB: Senator Roberti.

4 SENATOR ROBERTI: Aye.

5 The vote is five to zero. The confirmation is  
6 recommended to the floor. Congratulations.

7 MS. RAYMUNDO: Thank you.

8 SENATOR MELLO: Congratulations, Irene. It's nice  
9 to have you.

10 MS. RAYMUNDO: Thank you.

11 (Thereupon, the California State Senate Rules  
12 Committee Confirmation Hearing of Douglas Arnold,  
13 Richard Carpenter, Thomas Nagle and Irene Raymundo  
14 was concluded at 4:15 p.m.)  
15  
16  
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I, RONALD J. PETERS, a Certified Shorthand Reporter, of the State of California, do hereby certify that I am a disinterested person herein; that I reported the foregoing California State Senate Rules Committee Confirmation Hearing on Douglas Arnold, Richard Carpenter, Thomas Nagle and Irene Raymundo, in shorthand and thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 3<sup>RD</sup> day of March, 1992.

  
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APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

SENATOR HENRY MELLO

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

NORMAN D. SHUMWAY, Member  
Public Utilities Commission

SENATOR HERSCHEL ROSENTHAL, Chair  
Senate Committee on Energy and Public Utilities

ARNOLD TORRES, Legislative Advocate  
Number of Community-based Latino Organizations

DENNIS LOPEZ, Legislative Advocate  
MALDEF

SYLVIA M. SIEGEL, Founder and First Director  
Toward Utility Rate Normalization

TIMOTHY L. COYLE, Director  
Housing and Community Development

JUDY TANKERSLEY, Disaster Victim  
County of San Benito

JOHN G. LOCKWOOD, Director  
General Services

GERALD W. JOHNSON, Publisher & Managing Editor  
Small Business Exchange, Inc.



APPEARANCES (CONTINUED)

PAUL GUERRERO, Executive Director  
United Minority Business Entrepreneurs (UMBE)  
Hispanic Alliance

AUREA LUIS-CARNES, Executive Director  
Northern California Black Business Association





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## P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: Now we'll go to Norman D. Shumway, Member of the Public Utilities Commission.

We have three witnesses who are here who wish to testify. We have one other person who has indicated that he would like to testify, but they're not going to be here until 1:30.

What I'll do is, I'll take everything now, we will recess until 1:30. If the person is here, fine; if they're not here, we'll go to a direct vote at that time.

I think, Congressman, we heard from you. Is there anybody here in support of Congressman Shumway's appointment to the PUC? Is there anyone here in opposition? Please come forward.

MR. TORRES: Senator Roberti, Members of the Rules Committee, my name is Arnold Torres. I represent a number of Latino community-based organizations in health and education, social services, that deal a lot with consumers.

I'm here before you to try and provide you with an overview, a very detailed one, of concerns that lead the organizations I represent to request that we oppose, and request that you all oppose, Mr. Shumway as a Member of the PUC.

I was the National Executive Director of the League of United Latin-American Citizens, this country's oldest and largest Hispanic civil rights organization, in Washington, D.C. for about six years. In that capacity, I had the opportunity to





1 appear on the "Phil Donohue Show" with the distinguished Member  
2 from Stockton back in -- let's see here the transcripts -- I  
3 think it was 1984, January, or 1985 in January. We did it out  
4 in Miami because in Miami, that was where the first effort was  
5 to make English the official language as a local ordinance in  
6 the County of Dade.

7           It was a very tumultuous and interesting show, but  
8 it was there -- we were there to discuss the fact that Mr.  
9 Shumway had introduced a Constitutional Amendment to make  
10 English the official language.

11           Our concern at that time, and continues to be to this  
12 day, is that such an amendment is very divisive. It has proven  
13 historically to be unnecessary. It has demonstrated since it's  
14 been introduced in various states as well as this one the  
15 problems that arise on a social level, the types of tugging at  
16 the fabric of society that they do. Again, continually  
17 repeating history.

18           I am not concerned about the fact that Mr. Shumway is  
19 not a Hispanic. I'm not concerned about the fact that Mr.  
20 Shumway may not speak Spanish. I'm not concerned about the fact  
21 that Mr. Shumway is not going to see eye-to-eye on every single  
22 issues that our community is concerned about.

23           What I'm concerned about, and the reason why we think  
24 that Mr. Shumway does not merit your support and confirmation,  
25 is because we believe very strongly that Mr. Shumway is  
26 entrenched in a certain attitude and mentality that does not  
27 accommodate at least a consideration of divergent perspectives  
28



1 and allows those divergent perspectives to be included in a  
2 reasonable process of making a decision.

3 We at no time --

4 SENATOR CRAVEN: May I ask a question at this  
5 juncture, Mr. Chairman?

6 CHAIRMAN ROBERTI: Yes, Senator Craven.

7 SENATOR CRAVEN: Are you referring to something that  
8 happened eight years ago in that --

9 MR. TORRES: In 1988 -- for two Congresses,  
10 Mr. Craven, Mr. Shumway's introduced a Constitutional Amendment.  
11 So, it's for up until 1990.

12 SENATOR CRAVEN: Well, fine. But going back to some  
13 past history on the thing, are you referring to that as a  
14 disqualifier as a Member of the Public Utilities Commission?

15 MR. TORRES: Sir, I am indicating that by repeatedly  
16 introducing, or introducing this Constitutional Amendment twice,  
17 after having a tremendous amount of information presented to  
18 Mr. Shumway, some very antagonistically, some very, very well-  
19 detailed and researched, and Mr. Shumway continued to be very  
20 aggressive in his introduction of the Constitutional Amendment.

21 His transcripts on the "Donohue Show", he appeared  
22 again on May 15th of 1989. I have all of his announcements and  
23 press releases that he introduced --

24 SENATOR CRAVEN: Well --

25 MR. TORRES: -- and I'm saying, Mr. Craven -- excuse  
26 me -- what I'm saying specifically is that in view of that  
27 history, Mr. Shumway's going to have to deal with a consumer  
28



1 public in the State of California that is not monolingual  
2 English. It is, I would assume, to some extent in his opinion  
3 regrettably bilingual, trilingual, a number of languages.

4 And what we're saying is that as a Member of the PUC,  
5 there has to be a responsiveness to the reality of who that  
6 consumer in the State of California is, and the realities that  
7 they must deal with. And as a PUC Member, there's going to have  
8 to be some responsiveness to that reality.

9 SENATOR CRAVEN: Are you suggesting that he makes a  
10 decision based on the language used by the constituency?

11 MR. TORRES: What I'm saying, Mr. Craven, is that in  
12 view of his record, he has shown to be very, very intractable in  
13 being able to consider realities that must be addressed.

14 Now, I know that Mr. Shumway will stand by his  
15 record, and that's good. That shows that the man has  
16 conviction.

17 Second, I know that he will say, "Look at what I've  
18 done since I've been a Member of the PUC."

19 Mr. Shumway is an extremely astute politician. He  
20 may not have introduced earth-shattering legislation while a  
21 Member of Congress, but one thing Mr. Shumway is, is that he is  
22 astute, and he knows that he had to come before you, and he knew  
23 that there would be some concerns about these types of issues.

24 And what we're saying is that based on the substance  
25 of his record, not only on this issue but on others that you  
26 have been briefed on about Legal Services, about dealing with  
27 the elderly, we strongly believe that Mr. Shumway is really not  
28





1 the best person to occupy a position on the PUC.

2 SENATOR CRAVEN: I find your argument tenuous at  
3 best. To me, it is somewhat reminiscent of the argument being  
4 on the pitcher's mound, and you're running around the bases.  
5 You're not even close to the issue.

6 MR. TORRES: Mr. Craven, that's where I'm -- it's  
7 unfortunate that my arguments today are not persuasive enough to  
8 have you listen to our concerns, or have you hear our concerns.  
9 And that's unfortunate, and maybe it's my inability to convey to  
10 you aggressively or passionately enough the concern.

11 But I think that you as a Member of this Committee,  
12 as well as many others that sit on confirmation committees, you  
13 have to go on what a man's record is. We're only asking you to  
14 take into consideration what this record is.

15 SENATOR CRAVEN: Well, are you considering his record  
16 in the position to which he aspires?

17 MR. TORRES: Mr. Craven, I've worked in Congress for  
18 six years. I --

19 SENATOR CRAVEN: Don't tell me about Congress.

20 MR. TORRES: Oh, no, I think it's very --

21 SENATOR CRAVEN: Answer my question; will you?

22 MR. TORRES: For us to look at his record? Since  
23 he's been on the PUC?

24 SENATOR CRAVEN: Yes.

25 MR. TORRES: That's one year out of twelve years.

26 SENATOR CRAVEN: I don't care how many years it is.

27 MR. TORRES: We've looked at it, Mr. Craven.  
28



1           SENATOR CRAVEN: All right, and what have you found?  
2 Have you found some reason to disagree with him?

3           MR. TORRES: Mr. Craven, if we have found no reason  
4 to disagree with him --

5           SENATOR CRAVEN: I don't care whether you've found no  
6 reason --

7           MR. TORRES: You just asked me.

8           SENATOR CRAVEN: I asked you if you found reason to.

9           MR. TORRES: In some cases, yes. But we're not going  
10 to base our opposition to him based on one year of very, very  
11 limited --

12          SENATOR CRAVEN: That's fine, so you shouldn't be  
13 basing it on something that happened a decade ago, either.

14          MR. TORRES: Mr. Craven, it isn't a decade ago. He  
15 served in Congress for over a decade. We're looking at ten  
16 years and a majority of his time in public life, not just one  
17 year of limited scope of actions on the Board.

18          SENATOR CRAVEN: Just because it is your assumption  
19 that he has something in his psyche that is going to militate  
20 against your best interests.

21          MR. TORRES: Mr. Craven, I speak English just --  
22 probably just as good as you do. So, it's not against my  
23 interests, okay? So that's not the problem.

24          The problem is that I don't think that Mr. Shumway is  
25 going to be responsive to the diversity of the Californians who  
26 are consumers in the State of California. And I am basing that  
27 on the majority and the preponderance of his record as a Member  
28



1 of Congress who is a member of the public and serves the public.  
2 And that's what I'm saying.

3           It's great that if he wants to rest his laurels on  
4 one year as a member of -- as a sitting Member on the PUC, but I  
5 think it is -- we must base our decision -- your decision must  
6 be based on the preponderance of his record in public life. And  
7 the preponderance of his record in public life is not one that  
8 indicates that he has shown and demonstrated responsiveness to  
9 the public, especially to the diversity that this state  
10 presents.

11           SENATOR CRAVEN: It's rather strange, I believe, that  
12 you say, Mr. Torres, that he has not been responsive to the  
13 public, and yet he has been elected and re-elected time after  
14 time after time. And if there was a situation involving a lack  
15 of responsiveness, it was not reflected in the constituency  
16 which he was privileged to serve.

17           MR. TORRES: Regrettably, that's another argument for  
18 another day.

19           But the concern that we again bring to the attention  
20 of this Committee, Mr. Chairman and Members, is that the  
21 preponderance of the record of this former Member of Congress  
22 and now a nominee to serve on the PUC, in our opinion,  
23 graphically underscores the argument that we have made today,  
24 that there is very little responsiveness, acknowledgment, of the  
25 diversity of people in this country. More importantly, when you  
26 look at the State of California, there is a need to be very,  
27 very aware and responsive to that reality.  
28





1           As a Member of the PUC, he will have to deal with the  
2 consuming public. The consuming public is not what Mr.  
3 Shumway's legislation indicates he would want it to be, as much  
4 as he may wish it, as much as he may want to legislate it at one  
5 time.

6           The argument of implementing legislation, not  
7 introducing it, is not a very good one either. It's one of  
8 convenience. It is basically very difficult to anticipate that  
9 Mr. Shumway has been converted to being sensitive.

10          If Mr. Shumway in our discussions when we debated  
11 this program, when we debated it at the University of the  
12 Pacific, in the press announcement that he has -- that he issued  
13 after our debates and many other debates, I'm sure, he had with  
14 numerous other people, had at least shown some responsiveness to  
15 the concerns that we had, then it would be a difficult argument  
16 for me to make to you now.

17          But what I'm saying is that Mr. Shumway became more  
18 entrenched, more entrenched in this position, and it is a  
19 position that in California does not make sense.

20          CHAIRMAN ROBERTI: Mr. Torres, I appreciate what  
21 you're saying, and you're articulating some concerns of mine.  
22 And I reiterate, they do not all go Congressman Shumway's  
23 integrity, but to his policy.

24          However, the PUC is quasi-judicial and, I guess, it's  
25 quasi-legislative as well; it's sort of a hybrid. At least for  
26 the judicial part, and maybe to some extent for the legislative  
27 part, although the Congressman's voting record is very relevant,  
28



1 and his record of introductions is relevant, I think probably  
2 more relevant is his temperament to be able to hear cases based  
3 on what the law is, not unlike a judge.

4           Within that context, do you have any problems?

5           MR. TORRES: Yes, sir.

6           In my capacity --

7           CHAIRMAN ROBERTI: Then after Mr. Torres answers,  
8 Senator Rosenthal gets the floor next because he has to leave.

9           MR. TORRES: In my capacity as the former Executive  
10 Director of LULAC, I must have testified at least 20 times on  
11 confirmations of President Reagan and a couple of Mr. Carter's.  
12 And we were successfull usually once out of a year.

13           Temperament is very important. Trying to get people  
14 on the record is very important.

15           But in all candor, Mr. Roberti, it is very difficult  
16 for us, as it was during those days on other confirmations.  
17 When you look at someone's record of this nature, and it is so  
18 consistent, it is very difficult not to take into consideration  
19 temperament. It is very difficult not to take into  
20 consideration when you try to reason with someone, and you find  
21 no responsiveness to that reasonable approach -- a discussion of  
22 facts, a discussion of history, a discussion of -- not a  
23 discussion of passion, not a discussion of hyperbole, not a  
24 discussion of exaggerations, but one of facts. And when the  
25 other party does not even meet you a quarter of the way, an  
26 eighth of the way, there is no budging, it is very, very  
27 difficult for us to anticipate that the person has the  
28



1 temperament to be responsive, to have an open mind and listen.

2 And in the capacity as a Member of the PUC,  
3 temperament will be very important.

4 Now, I know the argument has been made, and it will  
5 be made probably today, that, "Look, I've done a good job as a  
6 Member for one year." Those issues have been very limiting.  
7 Those issues have not been as wide in issues that they were when  
8 he was a Member of Congress.

9 I honestly think, Mr. Roberti, that if we were to  
10 make a distinction, as has been made by you and others, I think,  
11 on the issue of the type of board the PUC is, that maybe that  
12 could be enough to allow him to go through.

13 What I'm saying to you is that there are other people  
14 who could do a better job. And that's what we think is  
15 important. And we've been before you on many occasions on other  
16 nominations, under Deukmejian as well as Mr. Wilson now, and  
17 we've made these arguments before. We know you have a very  
18 difficult job, and oftentimes it's very political.

19 But in all honesty, Mr. Roberti, we've never said  
20 that unless you appointment a Hispanic, he's not any good.  
21 That's not the issue.

22 CHAIRMAN ROBERTI: And I recognize that.

23 MR. TORRES: The issue, as you've identified, is  
24 temperament. We honestly, sincerely, and genuinely believe that  
25 Mr. Shumway does not possess the temperament, because if he did  
26 in the City of Stockton, he would have been much more concerned  
27 about that growing element of Hispanics, and Blacks, and Asians  
28





1 that are coming into that area, that Congressional and now  
2 Assembly and Senatorial districts, and trying to deal with the  
3 problems that that population has that seem to be affecting the  
4 well being of Stockton.

5 I know Stockton. \* I went to school at UOP for four  
6 years. I know that area like I know Sacramento, and I was born  
7 here.

8 And I'm saying to you, from all these years being in  
9 this area, the responsiveness simply has not been there. And  
10 it's very difficult for me to anticipate that he has found  
11 himself to be sensitive in one year of being on the PUC.

12 You know, it's not a personal thing. It's a  
13 passionate approach to you all because we've been before you all  
14 so often. We've been before Congress so many times. And it's  
15 not good enough to get just a person on the record.

16 There are better people to serve on the PUC who can  
17 be responsive and open-minded about the realities that confront  
18 the California consumer. That's really the bottom line of our  
19 concern and what we believe.

20 CHAIRMAN ROBERTI: Thank you, Mr. Torres.

21 Senator Rosenthal.

22 SENATOR ROSENTHAL: Thank you for permitting this  
23 opportunity for me to ask some questions concerning policy, as I  
24 do have to leave shortly for a doctor's appointment.

25 Commissioner, you were assigned the lead Commissioner  
26 on the Phase III telephone proceedings, which would allow  
27 greater competition in the local telephone service area.  
28



1           What is your view about what local telephone service  
2 should ultimately be like in California?

3           CONGRESSMAN SHUMWAY: We've been working toward the  
4 goal of universal service for many years. We've made great  
5 progress toward completing that goal, but there still is room to  
6 improve and to make even further progress.

7           I'm committed to do that. And part of making that  
8 progress means that we need to reach out to areas of California  
9 where there's a preponderance of non-English speaking  
10 populations and make known to them what it is that we're doing.  
11 And I've supported efforts on the Public Utilities Commission to  
12 do just that.

13          SENATOR ROSENTHAL: One of the concerns that I've had  
14 is the item of privacy. The Senate has already passed some  
15 legislation requiring that if caller I.D. is permitted, that  
16 there be the opportunity of blocking your line instead of having  
17 to be penalized by dialing separate numbers, additional numbers,  
18 for every call that you make in which you don't want your number  
19 seen.

20          In much of California, people pay extra money for  
21 not listing their telephones. This goes in the opposite  
22 direction: if you're charging somebody something for being  
23 unlisted, now you want to list his number, that person's number.  
24 That kind of bothers me. I'd just like to get your view.

25          CONGRESSMAN SHUMWAY: That's a very valid and a very  
26 topical issue because that case is before the PUC at this very  
27 moment, as you well know, Senator.  
28



1 I'm fully committed to the concept of privacy. It's  
2 part of our State Constitution. It was put there by an  
3 initiative which was passed by the voters of this state back in  
4 1972, and it has been construed as an inalienable right and one  
5 that is of paramount state interest. And I think in that regard  
6 California has indeed gone beyond what other states have  
7 legislated for themselves to define the right of privacy.

8 When we examine the caller I.D. issue, we really have  
9 competing rights of privacy that have to be somehow sorted out.  
10 On the one hand, we have the right of the party instituting the  
11 call to have his or her phone number revealed to the party which  
12 is being called. On the other hand, we have the party which is  
13 being called to be able to know whether he or she wants to  
14 answer a particular call or not. And really there are,  
15 therefore, competing interests, and somehow we're going to have  
16 to balance those and come up with a decision that will be in  
17 harmony with the state laws and certainly our Constitution.

18 I'm committed to do that, and I think we can do that,  
19 but it's going to take us some real -- some real head scratching  
20 and thinking to come up with that solution, but we will.

21 SENATOR ROSENTHAL: I've been concerned for some  
22 period of time of the growing trend at the PUC under the guise  
23 of deregulation to favor commercial and industrial customers  
24 over the residential customers. For example, in your only  
25 dissenting opinion at the PUC in a case, the gas case, you  
26 favored rate breaks for the commercial at the expense of  
27 residential rate payers, and that concerned me since you were  
28





1 the only one of the members who voted on that issue.

2           Why shouldn't low-income rate payers, seniors, and  
3 other residential rate payers be concerned about your record  
4 favoring rate breaks for business customers?

5           CONGRESSMAN SHUMWAY: Well, Senator, I fully  
6 subscribe to the idea that we need to provide Lifeline services  
7 to those that can't afford the usual kind of telephone service.  
8 We need to provide lower base rates for those energy users that  
9 are in low-income categories. I have no quarrel with that.  
10 It's part of being a public utility, part of providing a public  
11 service.

12           But we have been moving on the Public Utilities  
13 Commission toward a more price-based cost method. And part of  
14 that movement, it seems to me, would be to better allocate the  
15 costs between core and non-core users in the gas industry. And  
16 in that regard, we did have a Southern California Gas Company  
17 case in which I felt that allocation could be better made.  
18 Right now it's 50-50 between the core and non-core. SoCal Gas  
19 came in and recommended that it be reduced or be changed to  
20 84-16 core and non-core. The administrative law judge  
21 recommendation was that it be 60-40, and I felt that  
22 recommendation had merit. It was supported by the evidence in  
23 that hearing, and that's why I tried to persuade my fellow  
24 Commissioners that we should at least move in that direction.

25           It would have been comfortable to do so, because over  
26 all, the price to consumers was going to be reduced by that  
27 decision. Therefore, what impact it may have had upon them  
28



1 would have been dealt with by the overall reduction in price.  
2 It would not have been felt as a price increase. I thought it  
3 was an opportune time to make that movement, and therefore I  
4 asserted myself that way.

5 But I do share your concern that as we continue to  
6 move in that direction, as we continue to provide more  
7 market-based solutions to the regulation that we must do, that  
8 we monitor to see how this is going to unfold.

9 If there's anything that I learned in my years in  
10 Congress serving on the Banking Committee, it is that we need to  
11 exercise careful oversight and not go lightly on the auditing  
12 and on the examining aspect of oversight, so that we can  
13 determine that utilities are really not getting out in left  
14 field, or that we are, somehow, tilting that balance toward one  
15 side rather than the other. I'm anxious to keep the balance.

16 SENATOR ROSENTHAL: In another gas company decision,  
17 you supported a two-tier system where those who could afford it  
18 and are willing to pay \$25 could get a scheduled appointment for  
19 the gas company, and the rest of the people who couldn't afford  
20 it would have to wait for a four-hour -- up to a four-hour  
21 period for service.

22 I guess the question is, do you favor a dual system  
23 in utility service: first-class service for those who can  
24 afford it, and second-class service for those who can't afford  
25 the \$25?

26 CONGRESSMAN SHUMWAY: No, I do not, Senator. I'm  
27 sorry that decision may have indicated that that was the feeling  
28



1 of the Public Utilities Commission.

2 I think we're all committed to the concept that gas  
3 companies, among other public utilities, have a service to  
4 provide. It should be provided equally and without favoritism  
5 to all the citizens of California.

6 SENATOR ROSENTHAL: Well, but is it in existence now  
7 that you can get the service when you want it if you pay the  
8 \$25, but you have to wait four hours otherwise?

9 CONGRESSMAN SHUMWAY: I'm not aware of that effect.  
10 I'd be very happy to look into that, and if that is the effect,  
11 to see what we can do to change it.

12 Certainly, I don't think that kind of preferential  
13 treatment was intended by the PUC in that decision.

14 SENATOR ROSENTHAL: Now on the Intervenor Program,  
15 I've been a strong supporter of Intervenor fundings for groups  
16 that are facing financial hardships. I noted that the Auditor  
17 General recently criticized the PUC's Intervenor Program as  
18 being overly restrictive and inhibiting participation in PUC  
19 proceedings.

20 What are your general views on Intervenor funding?

21 CONGRESSMAN SHUMWAY: Well, I, like you, read the  
22 report of the Auditor General, and I think I shared with you  
23 many of the concerns that I have, all of us have, that were  
24 discussed in that report.

25 I'd like to make it very clear that I support  
26 Intervenor compensation. I know there's some degree of concern  
27 about that, but let me just point out to you that the real proof  
28





1 of the pudding in this regard is the fact that during the  
2 eleven-and-a-half months I've been on the Commission, that we  
3 have increased awards to Intervenors by more than 48 percent  
4 over last year. And if, indeed, there was any sentiment among  
5 us that we were going to somehow cut back on what we pay as  
6 Intervenor compensation, that kind of percentage would not be  
7 generated.

8           Those increased awards have been spread over almost  
9 24 cases. They have gone to various Intervenors, and I fully  
10 support the concept that in arriving at decisions, we need to  
11 take into account the kind of points of view that Intervenors  
12 can present to the Commission. I'm very anxious to see that  
13 program succeed and am committed to that end.

14           SENATOR ROSENTHAL: Finally, utility diversification,  
15 which is a form of deregulation, can hurt the rate payers.  
16 We've now had a couple of examples of affiliate dealings or  
17 sweetheart deals alleged. Not necessarily alleged, because  
18 there've already been some penalties appropriated. And the gas  
19 company's parent company investment, for example, in Thrifty  
20 Drugs, which has caused some problems in the press.

21           What is your view of the PUC's role concerning the  
22 protection of rate payers from the risks that we get involved in  
23 with utility diversifications?

24           CONGRESSMAN SHUMWAY: Well, I feel like we have a  
25 very, very prominent role to play, and one that I'm very keen  
26 about. And again, this probably harks back to my experience in  
27 Congress. We've all seen and painfully watched what has  
28



1 happened to the banking industry.

2           Maybe because I've gone through that kind of exercise  
3 with that industry that I feel as keenly about this as I do, but  
4 I'm very anxious to implement the law that you have provided for  
5 us in terms of requiring periodic reports in terms of conducting  
6 audits and in terms of watching very carefully and monitoring  
7 these affiliate transactions.

8           I wish that I could report to you today that were  
9 entirely on top of the matter, that we are -- that we have fully  
10 implemented the laws that were passed back in 1988. I cannot do  
11 that.

12           But I can pledge to you, Senator, that if I am  
13 confirmed, and it will be among my top priorities to see that we  
14 do that. Not just to satisfy your concern, but it's to satisfy  
15 a genuine concern that I feel, which has been underscored in the  
16 news of recent days, that we need to be very careful in allowing  
17 the kind of affiliate transactions that might reflect on the  
18 credit capacity of public utilities, and might someday even  
19 disturb rate payers of this state. We can't let that happen.

20           SENATOR ROSENTHAL: That's my concern, and that  
21 concludes my questions in terms of policy.

22           Thank you very much.

23           CHAIRMAN ROBERTI: Mr. Torres, are you concluded?

24           MR. TORRES: Yes, sir.

25           CHAIRMAN ROBERTI: The next witness, then.

26           MR. LOPEZ: Thank you, Mr. Roberti and Members. My  
27 name is Dennis Lopez, and I work with the Mexican-American Legal  
28



1 Defense and Educational Fund.

2 I had the opportunity to meet with Mr. Shumway  
3 yesterday, and we had what I believe is a very amiable  
4 discussion. However, we remained, I believe, with some very  
5 serious disagreements.

6 First of all, I'd like to say that our presence here  
7 is two-fold. One, we are indeed deeply concerned about the  
8 twelve year record of Mr. Shumway while in college [sic], and  
9 the advocacy for the English -- excuse me, I'm sorry. I  
10 apologize there. In Congress.

11 I'm sure he went through college in much less than  
12 twelve years.

13 [Laughter.]

14 MR. LOPEZ: My apologies.

15 And we are deeply concerned about the Congressional  
16 record and the authorship of those official English amendments,  
17 inasmuch as this is one of the main disagreements that we retain  
18 with Mr. Shumway, and that is that in his words, he indicated to  
19 me that he stands by that record, is proud of it, and indeed,  
20 advocated for these measures because of -- out of fear that this  
21 would be a bilingual government one day, or possibly to avert  
22 that from happening, and there's other areas in the world where  
23 bilingualism has been a divisive element.

24 Our disagreement is that the divisions are not caused  
25 by language but rather by economic and political and historical  
26 relationships. That language is not the element that should pit  
27 one linguistic group against another.  
28





1           Secondly, we are concerned, obviously, about his  
2 tenure should he be confirmed on the Public Utilities  
3 Commission. As you know, the Chicano-Latino population is, like  
4 many other linguistic minority populations here in California, a  
5 population that is a youthful population; a population that is  
6 relatively low-income population; a population that, although  
7 some of us may not be able to vote by virtue of being either  
8 lawful residents [sic] or perhaps even undocumented immigrants,  
9 many of us come from families where you will find citizens,  
10 documented residents and undocumented.

11           And the fact of the matter is that our community, the  
12 Chicano-Latino community, in a similar fashion to some of the  
13 other linguistic minority communities, we are consumers here in  
14 the State of California. And we are concerned that, given the  
15 twelve-year tenure of Mr. Shumway in Congress, that the advocacy  
16 of the type of legislation that would focus as the divisive  
17 element, language, is something that is very hurtful and harmful  
18 to linguistic minorities here in the State of California.

19           Whether or not we vote, whether or not those  
20 linguistic minorities in his Congressional district were able  
21 through citizenship to vote, the fact of the matter is that we  
22 are here. We are here. We are consumers.

23           As we stand on the brink of the 21st Century, there's  
24 tremendous, tremendous technological advances being made. And  
25 as California has in a very troublesome way slipped into a  
26 pattern of stratifying those who have and those who don't have,  
27 someone that sits on the Public Utilities Commission should be  
28



1 an individual who's not just sympathetic to the plight of the  
2 poor, the plight of the monolingual, non-English speakers, the  
3 plight of consumers who have no voice. That person should be  
4 someone who is in tune and actively, aggressively meeting those  
5 needs.

6 So in summary, my presence here and the opposition of  
7 the Mexican-American Legal Defense and Educational Fund is one  
8 of deep concern for the record of Mr. Shumway while in  
9 Congress, and we feel that that concern is so well-founded that  
10 we believe he will not be the type of proactive, effective  
11 person in the PUC over the time of his appointment that would  
12 meet the needs of this significant proportion of consumers here  
13 in the State of California.

14 CHAIRMAN ROBERTI: Thank you, Mr. Lopez.

15 Are there any questions? Senator Mello and then  
16 Senator Petris.

17 SENATOR MELLO: Mr. Chairman, may I ask you a  
18 question?

19 I know you're going to hear testimony this afternoon.  
20 Do you want Members to ask questions now or later?

21 CHAIRMAN ROBERTI: Now.

22 SENATOR MELLO: Thank you.

23 Mr. Chairman and Members, I asked some questions  
24 before on several issues that I will not go back into.

25 First I want to say a couple statements. In the  
26 press, you made some statements about this is becoming  
27 political, and that's the only reason some of us on the Rules  
28



1 Committee are questioning your nomination in a certain way.

2 I want to reject that thought, because whether you're  
3 a member of my party, or the Green Party, Peace & Freedom,  
4 Independent, or anybody else, I think my record and I think  
5 those of others here on the Committee, we look at the person's  
6 qualifications and record, and so I don't accept that thought.

7 I think I should pick up first where Mr. Torres and  
8 the gentleman from MALDEF picked up about your position on  
9 English only. And I think Senator Craven was trying to say that  
10 we have to just look at what you've done on the PUC Board, but  
11 I'd say that past actions of many, many a person we've confirmed  
12 here, this Committee went back, as they did with Jane Fonda --  
13 they looked at all of her prior record -- and others, and the  
14 statements where the decision was made was not on what they did  
15 in the newly appointed position, but they're influence by their  
16 past record, because I think the question here about English  
17 only is important because the Public Utilities Commission does  
18 have regulation over utilities. Phone companies use of  
19 translation languages for people calling certain information is  
20 available. In the phone books, there's sections of phone books  
21 in different languages.

22 And what I raise is what these gentlemen raised to  
23 some point, is that in 1985, you did sponsor the House Joint  
24 Resolution 96, a copy of which is here, I think that's English  
25 only, and it says:

26 "The English language shall be  
27 the official language of the United  
28





1 States.

2 "Neither the United States nor  
3 any State shall require, by law,  
4 ordinance, regulation, order,  
5 decree, program, or policy, the use  
6 in the United States of any language  
7 other than English."

8 Now, with that statement that you made in this  
9 bill, as I read that, this would prohibit the Public  
10 Utilities Commission from allowing these other languages to  
11 be used in people calling information or phone books.

12 To me, that is really unrealistic with what we are.  
13 We have 9 million Hispanics here in California. We have I  
14 don't know how many million Asians and other languages. And  
15 we have 2 million people that are not English speaking at all  
16 in our state who are contributing to the well being of  
17 California, and to take this posture, which is S.I.  
18 Hayakawa's posture -- you know, let 'em learn English --  
19 which is fine, but my thought is, unless we can make English  
20 available to them through their natural language, and then  
21 let them compete and be proficient, but if we are, according  
22 to your bill, they're just going to be isolated out in a  
23 sector of their own, detached from our society in the state,  
24 detached from services that they a right to just like anyone  
25 else.

26 So, I'd like to have you elaborate on your  
27 philosophy on English only and how that will influence you as  
28



1 far as serving on the PUC?

2 CONGRESSMAN SHUMWAY: Thank you, Senator. I'd be  
3 happy to do so.

4 First, let me say that the effort was not English  
5 only, but it was simply an effort which was meant to step  
6 away from mandated bilingualism on the part of government.  
7 And any other meaning that you might read into that  
8 resolution really mischaracterizes it.

9 The only effort there was to make English the  
10 official language of government. That's not to bar the  
11 teaching of other languages in schools. It's not to bar the  
12 use of languages in commercial settings, or religious  
13 settings, or families, or any other place.

14 In fact, I encourage the study of language, and I  
15 think it's well more Americans, including the Hispanic  
16 communities, speak languages other than just one. We are  
17 deficient in that regard.

18 But I -- I make no bones about promoting that idea  
19 when I was in Congress, and on at least a couple of occasions  
20 Mr. Torres and I have had the opportunity to debate that and  
21 raise exactly these same points. The fact that he comes here  
22 today and tells you it's not a personal thing, to me, is a  
23 very devious kind of statement to make, because obviously it  
24 is personal. He's upset because I have not accepted his  
25 point of view. That's the reason that he's testifying before  
26 the Committee today.

27 I have hundreds, maybe thousands, of Hispanic  
28



1 friends and supporters who agree with me on this issue.  
2 Mr. Torres would have you somehow believe that I'm isolated  
3 in some part of the community with a very narrow point of  
4 view. That is not the case. There are many Hispanics --

5 SENATOR MELLO: In your response to my question --  
6 you have a chance to talk in your closing about Mr. Torres.

7 What I want to know is how you will, as a Member of  
8 the Public Utilities Commission, differ from that language  
9 that -- apparently, when you say you don't want to bar the  
10 use of families talking in their natural language, but, you  
11 know, I want to just re-read this once again:

12 "Neither the United States nor  
13 any State shall require, by law,  
14 ordinance, regulation, order,  
15 decree, program, or policy, the use  
16 in the United States of any language  
17 other than English."

18 To me, I'm not an attorney, but plain and simple,  
19 that says that no state nor the government shall require by  
20 any way any language other than English. So that means to me  
21 that the Public Utilities Commission will not require  
22 telephone companies to offer translation or offer services in  
23 either the phone books or through their services other than  
24 English.

25 Am I incorrect in this interpretation?

26 CONGRESSMAN SHUMWAY: I think you are, Mr. Mello,  
27 and I'm glad you gave me an opportunity to clarify that.  
28





1           When I support bilingual outreach on the part of  
2 orders of the Public Utilities Commission, I'm supporting an  
3 effort by private investor-owned public utilities to put into  
4 place the kind of outreach, the kind of bilingual programs,  
5 that you and I agree might be necessary to reach all corners  
6 of this state. The action is done by private utilities --  
7 public utilities, rather, privately owned. The action is not  
8 done by the state agency. We simply direct it in order to  
9 provide universal service, to provide people with some degree  
10 of understanding of what we're doing, that they should either  
11 have bill inserts, or white pages advertising, but some kind  
12 of outreach effort to reach those people. And I support  
13 that.

14           SENATOR MELLO: That, to me, to use the word  
15 "private investor-owned", but they are publicly regulated.  
16 If they were not in the public's interest, we would not be  
17 regulating them.

18           CONGRESSMAN SHUMWAY: That's correct.

19           SENATOR MELLO: I would just say that your response  
20 contradicts the language that you drafted to put in H.J.R.  
21 96, which, the way I read it, it prohibits the state or any  
22 organization from the use of any language other than English.  
23 That's clearly what it says.

24           Now, the second point I want to make is, again, I  
25 want to go back to the record of an appointee to a board or  
26 commission that we are up here to confirm. I'd like to say  
27 publicly right here before the Rules Committee, I'd like to  
28



1 have back, Senator Roberti and others, some of these persons  
2 who were confirmed that I voted for on basis of their  
3 communication with me and their statements that they made  
4 that appeared to be very supportive of certain programs I was  
5 really concerned about.

6 So what that means, it has the makings for people  
7 -- you knew quite well when you got appointed you'd have to  
8 face Senate confirmation. That's in the Constitution.

9 But I'd like to have back several -- I'm not going  
10 to list the names right now -- because they have violated  
11 programs and thoughts that they communicated to me, and they  
12 -- once they got confirmed, boom, they change.

13 So, I think Senator Craven brought this up. I just  
14 want to state that there's several that we confirmed that I  
15 voted for, and I would like to have back. We don't have a  
16 mechanism to do that. It's too bad that the powers that we  
17 have here are not -- do not provide that.

18 The question about senior citizens, you made those  
19 statements about Mr. Carl Jones, that his organization was --  
20 the Congress of Senior Citizens was not representative, or  
21 they took some position not to conform with, as you stated,  
22 the group of Republicans in the House of Representatives.

23 They took a series of bills, and your votes are all  
24 public. They cast your vote along with others, and they  
25 rated you three right and 57 wrong out of 60.

26 And to me, I've worked with them for years, as I  
27 have with AARP and Seniors Commission, and others. I think  
28



1 he and his organization are as credible on behalf of senior  
2 citizens -- I've never seen him veer away from programs that  
3 are in the best interests for seniors. I just want to state  
4 that. It's very unfair for you, in my opinion, to attack his  
5 organization's judgment of you when I think his record stands  
6 for itself.

7 CONGRESSMAN SHUMWAY: I really didn't attack his  
8 organization or even Mr. Jones, Senator Mello.

9 I simply said that all of the seniors that have  
10 registered opposition to my confirmation are reading from the  
11 same script. They're all looking at the same rating, which  
12 incidentally, rates all Republicans low and all Democrats  
13 high. It was compiled by the National Council of Senior  
14 Citizens.

15 I would just suggest it's only one of many, and  
16 that one happens to make me look bad.

17 SENATOR MELLO: And I think, as we said last time,  
18 yours was the lowest of your Republican colleagues that were  
19 in that rating. It was probably relative to it.

20 Now I want to bring up another point. This has  
21 probably bothered me a lot more than anything, and that is,  
22 you continue to serve and draw a salary from the Federal  
23 Legal Services Commission, having been appointed to that  
24 position, in which --

25 CONGRESSMAN SHUMWAY: There is no salary?

26 SENATOR MELLO: Pardon?

27 CONGRESSMAN SHUMWAY: There is no salary.  
28





1           SENATOR MELLO: You stated before you had \$300 a  
2 month. Is that expenses?

3           CONGRESSMAN SHUMWAY: No, no, no. It's a meeting  
4 fee for attending meetings.

5           SENATOR MELLO: So you get \$300 a meeting?

6           CONGRESSMAN SHUMWAY: It's \$320 per meeting.

7           SENATOR MELLO: Per meeting, plus expenses?

8           CONGRESSMAN SHUMWAY: Plus my air fare and the  
9 hotel.

10          SENATOR MELLO: Okay. But the point is, so you're  
11 not getting a salary per se, but you're being paid or you're  
12 being reimbursed for expenses and per diem, so to speak.

13          The relevance here as I see it is, this Commission  
14 has oversight of other legal organizations in California,  
15 such as the California Rural Legal Assistance program, CRLA.  
16 What's relevant here, CRLA petitions many agencies on behalf  
17 of the poor in California. People are evicted from their  
18 homes; people whose power is being shut off because they  
19 haven't paid their utility bill, and others.

20          I see this, your serving there, as a way of -- and  
21 they're not here today, incidentally, and I heard -- I was  
22 surprised they weren't, because I imagined they would be  
23 testifying here. They certainly have the right to. But I  
24 was led to believe that they are fearful that with your  
25 position on the Federal Legal Services Commission, you have  
26 the ability to de-fund them or make recommendations that  
27 would be contrary to their staying. In fact, I guess at one  
28



1 time you introduced a bill to dismantle the CRLA.

2 The only relevance I find there is because they do  
3 petition the Public Utilities Commission on behalf of their  
4 clients at various times, and I see a conflict by you having  
5 the authority over them through this Federal Legal Services  
6 Commission.

7 CONGRESSMAN SHUMWAY: During the year I've been on  
8 the Commission, I have not been aware of any -- of any filing  
9 by CRLA in any matters the Commission has undertaken.

10 If indeed that were to happen, and if I sensed that  
11 there were a conflict, that somehow my standards were going  
12 to be compromised, I would certainly absent myself from the  
13 consideration of that issue. I do not intend to get involved  
14 in conflicts.

15 But I would say, again, that I don't know of any  
16 case where the CRLA has actually filed a petition or a  
17 complaint before the PUC in the year I've served there.

18 SENATOR MELLO: But I still say, if they were to  
19 come there, it's sort of an uncomfortable situation where  
20 you're sitting in judgment of them through --

21 CONGRESSMAN SHUMWAY: I would not sit in judgment  
22 on them if, indeed, there were that kind of discomfort. I  
23 can gauge that, and I would certainly disqualify myself.

24 SENATOR MELLO: Okay, and the last two points that  
25 I made, I asked you last time for any contributions you  
26 received from two categories, and I appreciate you sending me  
27 the amount.  
28



1           Perhaps the Sergeant can pass these out to  
2 Mr. Shumway and Members of the Rules Committee so we can  
3 follow this as we go along.

4           This is a sheet you handed to me in two categories:  
5 one being the public utilities themselves. The only thing we  
6 did, we just totaled the total numbers up that's shown here  
7 on the final page, showing the contributions you received as  
8 a Member of Congress from utilities that are now people that  
9 come before the Public Utilities Commission, totaling about  
10 \$33,035. These include AT&T, PG&E, Pacific Lighting  
11 Corporation, Truckers, Pacific Telesis, and nearly every  
12 utility that does come before the Commission.

13           These are, I might point out, these are not any  
14 more illegal than -- they're not illegal at all. They're  
15 just like those of us in the Senate who get contributions  
16 from different groups.

17           I think the only case I want to make here is that  
18 now that you're going to be serving on the Public Utilities  
19 Commission, you'll be regulating the rates for these  
20 commissions, for these clients, and they saw fit over the  
21 years to make a sizable investment in your candidacy.

22           I guess what I want to find out from this second  
23 one I have here, perhaps I should pass them both out and then  
24 you can comment on both of them. The second one is for banks  
25 and savings and loans totaling \$230,000 contribution over  
26 that period of time. And the banks, of course, do not come  
27 before you to directly testify for regulation, but they have  
28





1 an interest, I think, as lenders to utilities. And if the  
2 people that are lending these funds through for their ongoing  
3 operations were having a hard time paying back the banks, I'm  
4 sure the banks would be concerned and want to support a rate  
5 increase for their own borrowers, which in many cases are the  
6 utility companies.

7 So I guess collectively my point is, do you see any  
8 ongoing influence on your judgment or decisions to be made as  
9 a Member of the Public Utilities Commission coming from  
10 contributions from these two sources?

11 CONGRESSMAN SHUMWAY: The answer's a nonequivocal  
12 no, Senator Mello.

13 I, like you and other politicians, accepted  
14 contributions from many sources. If you look at the total  
15 you've come up for public utilities, \$33,000, that means less  
16 than \$3,000 per year I received from that group during the  
17 twelve years I was in Congress. From banks, \$230,000, that  
18 would be less than \$20,000 per year.

19 During all of my years in Congress, never did my  
20 contributions to my campaign, and I ran six campaigns, from  
21 PACs or groups like this reach even half of my total campaign  
22 contributions. I was always proud to be able to say that  
23 more than half of all of the monies that I received by way of  
24 campaign contributions came from local citizens in my own  
25 district. My record shows that. The most that banks ever  
26 contributed to any campaign was the next-to-last one that I  
27 ran for Congress, and in that case their contributions  
28



1       amounted to 16 percent of the total that I received.

2               And yet, I voted on banking legislation, as you  
3       would. And I did not perceive that to be a conflict of  
4       interest simply because my votes have never been for sale.  
5       My votes are not influenced by contributions. That's been  
6       the case in the past; it's the case now and will always be  
7       the case.

8               These contributions will make no part of any  
9       decision I make as a Member of the PUC.

10              SENATOR MELLO: Thank you.

11              CHAIRMAN ROBERTI: Senator Petris.

12              SENATOR PETRIS: I'm curious about these  
13       contributions. I haven't looked at this before.

14              The American Association of Truck Operators is  
15       listed. And in two or three places they show 20 bucks.

16              What in the world is that for? Is that for  
17       postage, or something?

18                               [Laughter.]

19              CONGRESSMAN SHUMWAY: That's a good question. I  
20       think a lot of these contributions that are in the \$200-300  
21       range were tickets to a fundraising reception, a very common  
22       thing that we have in Washington. You have them here in  
23       Sacramento.

24              \$20, I'm not sure how that got in there, but it was  
25       there.

26              SENATOR PETRIS: I imagine you'd have charged more  
27       than \$20 if you're going to the trouble --  
28



1 CONGRESSMAN SHUMWAY: We did.

2 SENATOR PETRIS: -- like we do.

3 CONGRESSMAN SHUMWAY: We do.

4 SENATOR PETRIS: Thank you.

5 CHAIRMAN ROBERTI: Any else here in testimony  
6 either for or against?

7 I believe we will have some testimony at 1:30, and  
8 then we'll ask Mr. Shumway to conclude and then we'll go to a  
9 vote at that time.

10 CONGRESSMAN SHUMWAY: Thank you very much.

11 CHAIRMAN ROBERTI: We'll take a five-minute recess.

12 [Thereupon a brief recess was taken.]

13 CHAIRMAN ROBERTI: The Committee will come to  
14 order.

15 The next appointment is Mr. Timothy L. Coyle,  
16 Director of Housing and Community Development.

17 I don't think you had a chance to testify.

18 MR. COYLE: I did not, Senator.

19 CHAIRMAN ROBERTI: We'll ask you why you feel  
20 you're qualified to assume this position?

21 MR. COYLE: Mr. Chairman, I will respect the  
22 interests of the Committee in this getting close to the noon  
23 hour and try and abbreviate a prepared statement.

24 Mr. Chairman and Members of the Rules Committee,  
25 it's indeed a privilege for me to be here and ask your  
26 support for my confirmation as Director of the Department of  
27 Housing and Community Development.  
28





1 I accepted this position at the request of Governor  
2 Wilson. I moved from Washington, D.C. out to California, my  
3 home state, for two primary reasons. First of all, I believe  
4 the Governor has a vision of how we tackle the affordable  
5 housing problems in this state, which are significant. And  
6 secondly, I've been quite impressed, particularly over the  
7 last three or four years, at the leadership, both in the  
8 Legislature and in the shelter community, in also tackling  
9 those formidable housing problems.

10 Mr. Chairman, I believe I bring to this position a  
11 great deal of experience in the area of providing low and  
12 moderate income housing assistance to people that need it.  
13 In Washington, as a coordinator for programs for the U.S.  
14 Department of Housing and Urban Development's 81 field  
15 offices, I developed a working knowledge of the operations of  
16 a \$14 billion bureaucracy. In addition, I became intimately  
17 aware of the commitment that public servants make in  
18 providing these needed housing programs to their intended  
19 beneficiaries.

20 I also believe my work in the area of housing and  
21 community development policy and legislation helped me  
22 appreciate the need for a national strategy as well as a  
23 state and a local strategy to deal with affordable housing.  
24 In particular, I'm proud of my work to have helped enact  
25 three major housing and civil rights laws: in 1988, the Fair  
26 Housing Amendments Act; in 1989, the HUD Reform Act; and in  
27 1990, what I consider and I think most other people do to be  
28



1 a landmark legislation in the area of affordable housing with  
2 the passage of the Cranston-Gonzales National Affordable  
3 Housing Act.

4 In coming to the Department of HCD, I have high  
5 hopes, and over the last ten-and-a-half months or so, I  
6 believe I and my very experienced and capable staff has made  
7 an effort to provide a high level of service to our  
8 constituents.

9 But I also want to be candid and admit that there  
10 are some problems in the Department. Many of them we saw  
11 very early on. For example, there was no management plan  
12 establishing the goals and priorities of where the Department  
13 should go when I arrived in March of last year.

14 Management capability and capacity of the  
15 Department, I'm afraid, is stuck with technology of the  
16 past, and as we look at a portfolio, Mr. Chairman, created  
17 largely through your leadership on bond measures in 1988 and  
18 1990, it's presenting us with a business that the Department  
19 has never been in before, which is developing affordable  
20 housing in very large numbers, and then managing that over  
21 the 30 or 40 years that we're required to do to uphold  
22 regulatory agreements and enforce the terms of those  
23 agreements. So, I found it very disturbing that there is no  
24 unified accounting system in the Department to deal with  
25 these -- this enormous programmatic undertaking.

26 Unfortunately, a performance appraisal program  
27 that's designed for individual performance of the employees  
28



1 is not well used in the Department. I don't see how we can  
2 have accountability unless we are holding all of us, all the  
3 employees in the Department -- some 700 -- to a standard and  
4 then checking them on their performance.

5 Certainly, my testimony here today is going to make  
6 some judgment as to whether I am qualified after having been  
7 on the job for ten months, and I respect that. I deserve  
8 that scrutiny.

9 There is no formal training program. Perhaps as a  
10 result of the budget cuts, perhaps because there was so much  
11 interest in trying to move the housing funds through the  
12 process and hiring the staff that were necessary to do that,  
13 there wasn't a pause along the way to know whether we had  
14 skilled people in the right places, and whether we were  
15 investing enough in terms of training.

16 And finally, and the Legislature observed the same  
17 thing even before my arrival, there is no work measurement  
18 standard in terms of what it takes to take in a rental  
19 housing construction project or program application and walk  
20 it through, move it through the process, so we can have loan  
21 closings occur in a timely way, so that we can have adequate  
22 monitoring of the construction of a project. In most cases  
23 for multi-family it takes around 18 months. And finally,  
24 that oversight, the management, the long-term monitoring  
25 that's so necessary in making these programs work for us.

26 Those did not exist. My challenge, as I stepped --  
27 set foot in HCD, was to begin to do something about it, and I  
28





1 believe we have.

2 At the same time that these are formidable  
3 weaknesses in the structure and the management of the  
4 Department, we also have a constituency that we need to  
5 deliver our services and our programs to. So, while we  
6 recognize that there are problems, structural, some, in  
7 nature, others management, we can't shut the plant down. We  
8 have to keep producing. So, I made a very conscious decision  
9 early on. I met with many of the shelter providers around  
10 the state, and one of the greatest appeals that they made to  
11 me was, "Tim, please, don't change the rules again."

12 What we need is to -- we have somewhere in the  
13 neighborhood of \$500 million in critical housing funds, the  
14 first time ever, I think, in the long history, that that much  
15 money has been dedicated to this need, and we had a new  
16 industry emerging as a result, Mr. Chairman. And what that  
17 industry was hoping that we weren't going to do was change  
18 direction with the new director coming on board.

19 So, I was sensitive to that. What we have to do is  
20 to make sure that in reviewing projects, in delivering those  
21 products, that we do so keeping in mind our fiduciary  
22 responsibilities that we're managing taxpayers' dollars, and  
23 so that we have to be careful about those programs and  
24 policies.

25 However, I did and do respect the need for us not  
26 to disrupt a process because we need to get the housing out  
27 just as quickly as we can.  
28



1           That housing need is enormous. Many Members of  
2 this Committee, certainly people in this room, have heard me  
3 identify what our housing need is. We publish it in the  
4 California Statewide Housing Plan. It is somewhere in the  
5 neighborhood of 250,000-300,000 new units of housing, and  
6 that's all income categories, that have to be produced on an  
7 annual basis for the entire state.

8           In terms of how well the state is doing in  
9 addressing that need, last year we had 108,000 housing  
10 starts, a nearly historic low.

11           So, as said earlier, as much as we want to enact  
12 the reforms that'll help make the process work in a very  
13 orderly way, we also have to be cognizant that there is a  
14 great demand for our housing programs, and we have to balance  
15 the need to get those programs and services delivered  
16 expeditiously.

17           As far as policy goes, Mr. Chairman, that's where I  
18 do have a very strong interest, a very passionate interest,  
19 in pursuing strategies to address this affordable housing  
20 problem in the state. I have established goals for the  
21 Department, ten specific goals, and I believe those reflect  
22 the thinking of Governor Wilson as well as a view that I  
23 have based upon not just Coyle's view of the world, but an  
24 interpretation of what our needs are articulated by a variety  
25 of people that deliver housing and that benefit from housing  
26 here in the state.

27           I believe we need to take action both statutorily  
28



1 and regulatorily to help produce a good housing policy for  
2 this state. I believe it centers on the statewide housing  
3 plan itself, to make that a more meaningful document. I  
4 think some of the state goals are largely ignored by  
5 communities, and we need to make a difference in that area.

6 We have to provide a dependable funding source for  
7 affordable housing. I think one of the biggest villains in  
8 development, Mr. Chairman, in the real estate industry is  
9 uncertainty, and we do a very good job of creating  
10 uncertainty both at the federal level and at the state level  
11 because we deal in cycles. And as a consequence, the  
12 industry responds or relates to those cycles.

13 We can be well supported at the federal level in  
14 helping deliver some certainty by enacting long-term  
15 strategies through tax policy and national housing policy.  
16 At the same time, however, here, to the extent that the state  
17 can muster the funding through a variety of different  
18 sources -- and they all don't come from Sacramento  
19 necessarily -- we need to muster those funds and provide them  
20 on a continuum for -- to address this critical housing need.

21 Finally, one thing that tends to draw snickers from  
22 to time, but this is a key goal of mine, Mr. Chairman, is  
23 that we need to do a little bit better public relations on  
24 what I'm in business to do, and that is to develop low and  
25 moderate income housing. There is enormous fear, both in  
26 this state and all over the country, that this thing called  
27 affordable housing is somehow going to upset the community  
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1 and its balance of interests and needs.

2 And yet, I go from town to town, city to city  
3 around this state, and I see shining examples of how  
4 affordable housing, as it's been come to be termed, is  
5 working very well within the community. And I attribute that  
6 a great deal to the work of so many capable and talented  
7 nonprofits in this state, and again, nationwide.

8 I think we need to continue our investment in that  
9 community-based strategy. I think we also need to enlist  
10 local leadership in helping overcome this resistance to the  
11 development of affordable housing.

12 Mr. Chairman, when I was first starting at the job,  
13 you introduced me to a young man in West Hollywood who put  
14 his job at risk to make this same appeal. Mayor John  
15 Heilman was in the face of a recall petition because he  
16 wanted to produce a homeless shelter in West Hollywood. He  
17 stood firm. He demonstrated to the community that this  
18 particular activity wasn't going to be so onerous that it  
19 would upset that community. And he won, and he won.

20 And he represents to me, as so many other local  
21 elected officials that do stand up in the face of this  
22 opposition, to be our leaders. We can't do it all here from  
23 Sacramento. We need that support from the localities, and I  
24 think about John Heilman's courage and leadership.

25 CHAIRMAN ROBERTI: And I want to interject, and I'm  
26 glad you raised that, that in my dealings with the  
27 Department, Mr. Coyle has been extremely forthcoming in  
28



1 working with cities, working with communities, and in trying  
2 to provide the necessary shelter that is needed in the  
3 tremendous housing crisis that we're facing in California,  
4 especially in the Los Angeles area.

5 MR. COYLE: Thank you, Mr. Chairman.

6 I think the tide is changing. I think there is  
7 significant interest in addressing this problem. We all know  
8 what the aggregate numbers are in population growth. We all  
9 know that if we don't address these problems on a local  
10 level, they're going to explode in terms of not just need for  
11 shelter, but need for additional services that may come  
12 without taking care of the problem now.

13 Our investment is both intellectually and  
14 financially along those lines, Mr. Chairman, and I hope to  
15 get the support of this Committee to carry forward our goals.

16 Thank you.

17 CHAIRMAN ROBERTI: Thank you, Mr. Coyle.

18 I have one question I would like to ask you,  
19 something that's just come up.

20 The City of Santa Ana has passed an ordinance  
21 limiting the number of occupants permitted in a rental unit  
22 as City policy as opposed to, you know, the contractual  
23 agreement between the landlord and the tenant.

24 The problem, as I see it, and Santa Ana being a  
25 good example when you start getting a cultural change of  
26 large numbers, say, of Hispanic people, where they -- and  
27 others, too, but Santa Ana just strikes me as a Hispanic  
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1 population, it's certainly not uncommon for the extended  
2 family to live in the unit.

3 I don't know if the Department is thinking in terms  
4 of what to do if this kind of ordinance spreads. It's one  
5 thing if you have the ordinance as between the tenant and the  
6 landlord, but that doesn't appear to be the case here.

7 I'd like to know if you're going to address that,  
8 or if that's going to be part of any policy considerations.  
9 It could present some people with the Hobson's choice of  
10 either breaking the law or going homeless.

11 MR. COYLE: That's right.

12 Perhaps the situation exists as the result of  
13 inadequate supply. And I say perhaps because I don't want to  
14 be -- I don't want to make a definitive statement without  
15 being supported by facts.

16 But I just know statewide that a lack of supply,  
17 particularly for low and rentals, is leading to problems such  
18 as overcrowding. Over the last decade, overcrowding in this  
19 state has doubled.

20 As far as the Santa Ana situation goes, my basic  
21 view of this, Mr. Chairman, is that the ordinance that the  
22 City of Santa Ana passed is unnecessary. We have a Uniform  
23 Housing Code which lays out the health and safety  
24 requirements for occupancy, period. To go beyond that, or to  
25 supersede that, as much as that may be an honorable thing to  
26 uphold in terms of local control, in this case, because of  
27 what the potential outcome might be, what the consequences of  
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1 that might be, I frankly don't understand why that has to be  
2 enforced; why this new ordinance has to be adopted. We have  
3 an adequate health and safety standard, and it's our view  
4 that going beyond that is unnecessary.

5 CHAIRMAN ROBERTI: If you were asked to come up  
6 with an amicus curae brief and challenge the Santa Ana  
7 ordinance, would you so state?

8 MR. COYLE: Yes, we have, Mr. Chairman. The  
9 plaintiff in that suit has requested that we file an amicus  
10 with the court, and we are -- we are, without saying what the  
11 outcome will be, because this is a process that involves both  
12 the Attorney General and our office as well, we are pursuing  
13 that.

14 CHAIRMAN ROBERTI: Okay, thank you.

15 Any other questions? Senator Mello.

16 SENATOR MELLO: Thank you, Mr. Chairman.

17 Also, the Chairman used the word "forthcoming", and  
18 I want to say that myself. He's been very cooperative in  
19 responding to the many calls I've had. And I think it points  
20 up to the problem, the many problems in that Department when  
21 he took over. I appreciate the fact he recognized the  
22 problems and is trying to do something about them.

23 I think some of the problems still exist, and there  
24 are just a lot of people out there that are unhappy with  
25 CalDAP and the shelter program, and so forth.

26 The question that Senator Roberti raised about the  
27 extended families, you said we have -- the Health and Safety  
28



1 Code provides fully for that situation right now, but FEMA  
2 came in during the earthquake in my area, Loma Prieta. We  
3 had three families living in a single home, single-family  
4 home, and with multiple children. And when they gave out the  
5 rental vouchers, they gave it to Family A. Family B came in  
6 and wanted to get vouchers. They said, "No, we already gave  
7 it to A." Family C came in and said, "We want a voucher."  
8 They said, "No, A already got it," and so forth. It took  
9 real action from our Congressman, Leon Panetta and others,  
10 putting the pressure on them to recognize that each were  
11 paying collectively the rent, and they had status there.

12 What I'm concerned about, this health and safety  
13 code that you might interpret, FEMA completely failed -- and  
14 I know that's a federal agency, but your agency, I didn't  
15 hear your Department coming in there. Of course, you were  
16 not in your position at that point, but the state didn't  
17 help at all in trying to reconcile the fact that families,  
18 because of the shortage of housing, are doubling and tripling  
19 up in order to exist in shelter.

20 MR. COYLE: You had mentioned this instance to me  
21 before, Senator, and I think it points up how, in this case a  
22 federal agency, not to be directly critical of FEMA, but how  
23 a federal agency has overlooked a situation in a local  
24 community.

25 In that instance, it was the benefits that were  
26 being provided through the FEMA program that were in error to  
27 just one family because of the perception that one house/one  
28



1 family, I suppose, and overlooked the fact that there was  
2 either an extended families and/or additional families that  
3 were occupying those homes.

4 I am not aware of the state's dealing on that  
5 particular. If it was the CalDAP program, the California  
6 Disaster Assistance program, however, the assistance would  
7 have probably dealt with the structure itself. We in that  
8 program are the lender of last resort. FEMA does have  
9 individual family benefits. Our assistance is for the repair  
10 and the seismic retrofit of the individual unit of housing.

11 So, if -- and again, without knowing what was the  
12 outcome in the situation you just cited in terms of the  
13 state's involvement, and this was perhaps years ago, it would  
14 -- it still would have ended up as a -- our assistance would  
15 have ended up fixing the structure or providing some  
16 replacement for that structure as a way to resolve the issue.

17 SENATOR MELLO: If cities start passing these  
18 Santa Ana-type ordinances, it's just going to push more  
19 people out to the homeless.

20 MR. COYLE: There's no question about it.

21 SENATOR MELLO: We already have more and more.

22 Now, most of the concerns that were raised, brought  
23 to my attention, are the administration of the emergency  
24 shelter program, and some referring to CalDAP.

25 I've given you copies of all these letters, so I  
26 won't go through them. But they extend statewide: the Los  
27 Angeles County-wide Coalition; La Cooperativa Cocino, that's  
28





1 a statewide organization; the Filipino American group; United  
2 Way of Monterey Peninsula, and I know that you called the  
3 director down there and had contacts with them, as well as  
4 the Seaside Peninsula Outreach Welcome House, people  
5 assisting the homeless; Ukiah Community Center; Mental Health  
6 Association of San Mateo County, and others.

7 Now, one of the things you made in your opening  
8 remark that I listened carefully to, you said our job is to  
9 provide a shelter to the homeless, and you added, those who  
10 need it. Now the question there is, if you can explain what  
11 those who need it mean? Are there people out there amongst  
12 the homeless who don't need it?

13 What I've come to realize, about 50-60 percent of  
14 the homeless are employed and working in jobs; 60 percent are  
15 women and children. And I've never been able to find anybody  
16 out there in the homeless category who really don't need  
17 shelter or need assistance for both food and shelter.

18 So, I'd like to have you explain what you mean by  
19 those who need it.

20 MR. COYLE: Well, I start from the basic  
21 proposition, Senator, that anyone without adequate shelter,  
22 whether it be no shelter at all or substandard housing, needs  
23 to have that situation fixed. I mean, there are a lot of  
24 federal and state definitions of how to qualify and how you  
25 rank up against others who are in need of this housing, but  
26 certainly a person without shelter at all should be among our  
27 most immediate priorities.  
28



1           And I think it's critical that we don't just simply  
2 warehouse these individuals. And much as we need to get and  
3 provide them a roof over their heads, we can't just stop it  
4 there. We need to move beyond and to the best of our ability  
5 determine how an individual became disenfranchized, and do  
6 whatever we can through the state or through local programs,  
7 or through the nonprofits -- the shelter providers and the  
8 service providers that do such a fabulous job around this  
9 state to help that person get back into something a little  
10 bit more orderly, both in terms of shelter as well as  
11 productivity in the community.

12           So, perhaps I haven't fully appreciated the -- your  
13 question, but I just start from the basic proposition that if  
14 someone is living in substandard housing, if someone is  
15 homeless, or if someone is paying an excessive amount of  
16 their income for shelter, then we need to examine what the  
17 state, what the private sector, what the public sector, what  
18 the federal government can do to help alleviate that problem.

19           SENATOR MELLO: Several of the complaints that  
20 we've received, including charges of unreasonable delays in  
21 the release of funds, and in some categories, your CalDAP  
22 program has reversed the local FEMA boards, who approved the  
23 project locally, and situations where they have approved the  
24 funding where your agency has then said no.

25           Now, this puts them in a very untenable position.  
26 They really have to think they have a program approved, and,  
27 you know, if you reverse it, they're probably wrong in  
28



1 approving it, but they raise the hopes and expectations of  
2 these local agencies only to find that your agency has  
3 overturned and rejected them.

4 My experience in going through about five disasters  
5 in my area -- earthquake, flooding, and so forth -- has been  
6 the biggest disaster of them all has been FEMA, the Federal  
7 Emergency Management Act, who really have failed to respond  
8 to the needs locally and to put in place programs to help  
9 people during this term of disaster.

10 If they approve a project and you've reversed them,  
11 that seems inconceivable. I would look at it the other way,  
12 the likelihood of them reversing the state would probably be  
13 more likely.

14 Can you explain why your agency has overturned  
15 funding by the local FEMA boards on several occasions?

16 MR. COYLE: I would very much like to hear about  
17 that specific instance, because I'm not sure we could have an  
18 approval by FEMA and a disapproval by HCD. We act as the  
19 lender of last resort.

20 If you're a victim of Loma Prieta, you come in and  
21 apply at FEMA first. FEMA essentially takes charge of the  
22 whole application process.

23 If you fail to meet the FEMA requirements in terms  
24 of asset test and need, and so on, then you move to the next  
25 position in line, which is the Small Business Administration.  
26 If you fail to meet their tests, then you move to CalDAP.  
27 And there we would just evaluate an application not on  
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1 whether or not FEMA said it was good or bad, because in that  
2 situation, whether FEMA weighs on that request or not, it's  
3 irrelevant.

4 We review the -- if this is the case of a  
5 homeowner, for example, that if they were unable to finance  
6 this repair of their home through conventional means, if they  
7 didn't meet the FEMA or the SBA tests, then we would evaluate  
8 whether or not they had proven that they are incapable of  
9 making these repairs which the statute says must meet not  
10 only health and safety but seismic code.

11 It's possible that at that third stop, this  
12 particular individual failed also to meet our tests. And I  
13 really don't know, and I certainly want to look into it.

14 SENATOR MELLO: We shared those letters with you.

15 But it seems to me that the other agencies should  
16 not be approving any application, only later to have it  
17 disapproved. I think they can take a position that -- of  
18 approval subject to, or something of that type.

19 Now, the other point, and you said, or somebody  
20 said, "Don't change the rules." Well, one of the things that  
21 you changed, I understand, is that the \$30,000 that was in  
22 statute to provide for emergency repairs, and we have a lot  
23 of -- I have a lot of people in my area that are now being  
24 told that that rule has been changed by your Department and  
25 you no longer pay for items that were within that \$30,000.

26 Was it a shortage of money?

27 MR. COYLE: Yes, Senator.  
28



1           The appeal that was made to me was, "Don't change  
2 the rules." But from time to time I have to. This one was  
3 clearly a function of the funding that was -- that remained  
4 available to deal with what appeared to be an ever increasing  
5 demand for relief under CalDAP.

6           We had at that time -- this is going back to April  
7 of last year -- only a certain amount of funding approved in  
8 the budget. It was an additional \$37 million on top of the  
9 original \$64 million that was provided for the program.

10          So, we essentially and after consultation with the  
11 Legislature, which -- a couple of committees wanted us to be  
12 even tougher. Again, this was a function not of equity or  
13 service; it was how much money we have left to spread around  
14 to this constituency, this number of Loma Prieta victims.  
15 And as a result, we simply took the requirements in the  
16 statute, and we applied a test in terms of what activities  
17 should be funded to be sure that we were spending only what  
18 was absolutely necessary to avoid a health and safety  
19 problem.

20          I will admit freely that that does in essence  
21 produce a bit of an inequity. If you were earlier in line as  
22 a victim, and you were up against the original \$64 million  
23 pot, there may have been in the year that preceded my coming  
24 to HCD a more generous allocation of funds on a per unit or  
25 per application basis.

26          What we were facing in April was a fixed amount of  
27 money that was left, an increasing demand through the  
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1 applications that were continuing to come in, and therefore,  
2 we did make this change.

3 SENATOR MELLO: As I understand that situation,  
4 that \$30 million cap was part of the statute that was put in  
5 there by legislation; is that correct?

6 MR. COYLE: The \$30,000, yes.

7 SENATOR MELLO: Now you say that in consultation  
8 with a couple of committees, that that statute was changed?

9 MR. COYLE: No, sir. What was happening was --

10 SENATOR MELLO: No, you wanted to change the  
11 statute but you couldn't, but you changed the regulation --

12 MR. COYLE: The statute allows for up to \$30,000  
13 for repairs. And then it creates an exception.

14 If you cannot bring your property up to health and  
15 safety and seismic code, then the Department may waive the  
16 statutory requirement, in essence, and fund more.

17 And what was happening is that the average CalDAP  
18 funding amount was well in excess of the \$30,000, and that  
19 was the budgeted -- that was the number that was used to  
20 create the budget for the emergency fund. And it was clear  
21 that we were going to run short of funding.

22 So, that test was used, perhaps a little bit more  
23 critically than it had been in the past, but we didn't waive  
24 -- we didn't change the statute or even change the  
25 implication of the statute. We just held to a tougher test.

26 SENATOR MELLO: How could you hold to a tougher  
27 test? It's like raising up the bar when a person's trying to  
28





1 high jump.

2 I think I understand that point, but I think in  
3 total, there has been 600 single-family homes that received  
4 approval, and 110 rentals, but there's still 1500 remaining  
5 applications that have not been funded; is that correct?

6 MR. COYLE: Yes, roughly those numbers.

7 SENATOR MELLO: How are those going to be funded?  
8 I mean, the laws that were passed both federal and state  
9 provide for these reimbursements.

10 MR. COYLE: First of all, we provided -- if it's a  
11 question of funding, we provided -- the Governor asked for in  
12 his budget last year, for '91-92, an additional \$33.1  
13 million. And then in his current budget request, there is  
14 additional \$45 million to deal with that inventory.

15 So, we believe that if we get the approval of the  
16 most recent budget request, we'll be funding CalDAP, which  
17 was originally targeted to be about \$64 million in state  
18 liability, to be closer to \$200 million.

19 And again, at that point in time, Senator Mello, we  
20 were working with a fixed amount of funds and an increasing  
21 number of applications.

22 With regard to the 1500 or so applications -- and  
23 I'm not sure that that is the precise number, but it's in  
24 that ballpark -- a good many of those, I think about 1100,  
25 have not yet been submitted to HCD.

26 This is one of the problems with that program, is  
27 we basically contract with the local communities to process  
28



1 the applications. And they do so at the local level.  
2 They then, when they have received all those, gone out and  
3 done the inspections, gotten the estimates of work and  
4 repair, they then submit it to us for a final approval.

5 My feeling is that that is a terribly awkward and  
6 time consuming process. We have a further disaster,  
7 unfortunately, that I was here to try and do something about  
8 from the beginning, the Oakland Hills fire. We decided to  
9 cut out that one step in having the local community taking  
10 the applications. We've asked that they be submitted  
11 directly to HCD so we can see the applications themselves,  
12 have the interaction with the victims, the applicants  
13 themselves, and try and resolve it without the extra hurdle.

14 SENATOR MELLO: I think that confirms these  
15 statements of unnecessary delays that are taking place.

16 The people are confused, because -- and Senator  
17 Petris is going through that now with the Oakland Hills where  
18 he's a direct victim of the situation -- but they're really  
19 confused about all the layers of government, dealing with  
20 cities, counties, districts, the state and the federal  
21 government. They don't know who to turn to. So, somebody  
22 has to point them in the right direction.

23 So, I appreciate you taking care of the Oakland  
24 Hills fire. I wish we could put the Loma Prieta earthquake  
25 victims in the same category and try to fast track their  
26 applications.

27 MR. COYLE: One of the things we did so is, the  
28



1 application period was left open, and with no real  
2 discipline -- and this is no fault of the local government --  
3 there was no real discipline to get all the applications in  
4 by a certain date. So, last I believe it was July, we  
5 actually imposed a deadline. We announced it in either -- in  
6 early June that we would have a final cutoff date to get all  
7 those applications in by August first. So, by August 1st,  
8 1991, we could declare a universe of those that were in need  
9 of assistance under CalDAP Loma Prieta.

10 Again, I fully agree with your concern, Senator  
11 Mello. There were too many hoops, too many levels. These  
12 applicants -- Senator Petris in the Oakland Hills fire, they  
13 have to go first to one federal agency, and then to another  
14 federal agency, and then to the state before they might  
15 ultimately get assistance. And that was even after they have  
16 consulted with their insurance companies. And that is very  
17 confusing, and it's very disconcerting to someone who's  
18 suffering at that time, and they're wondering who's in  
19 charge, and what's the sense of this process.

20 So, I fully accept that criticism, and I agree with  
21 it, and I would like to make some change to the CalDAP  
22 program so we don't have at least that extra hurdle going  
23 from the local community to the state before the funding is  
24 provided.

25 SENATOR MELLO: Extending the filing period is fine  
26 from a bureaucratic point of view, but these are victims of  
27 natural disasters. They're helpless, and they need  
28





1 assistance. And many times, I don't know how they exist for  
2 three, four, or five years in order to try to get something  
3 from our government to help them out.

4 Thank you for answering the questions.

5 CHAIRMAN ROBERTI: Thank you.

6 Senator Petris.

7 SENATOR PETRIS: I'd like to follow up on that.

8 I appreciate your efforts. I know you've got a  
9 very tough job there.

10 The City of Oakland is concerned about another  
11 change. You mentioned, "Don't change the rules on us." In  
12 June, there was a change made regarding the extent of repairs  
13 that would be eligible for funds from CalDAP relating to the  
14 Health and Safety Code. The June change restricted the  
15 eligibility by saying it would only apply to Health and  
16 Safety Code requirements that endangered the occupants.

17 The local codes, however, are much broader than  
18 that, and they can't get a certificate of completion if they  
19 don't follow the local codes. And the homeowner finds  
20 himself -- this is the earthquake stuff I'm talking about now  
21 -- the homeowner finds himself or the building owner finds  
22 himself in a dilemma. First of all, they're required to  
23 exhaust all possible private sources. They've done that.

24 There's a gap there between the amount now  
25 authorized by CalDAP and the requirements of the local  
26 ordinance, and that needs to be resolved. I guess you're  
27 probably aware of it. I'm sure they've written to you.

28



1 MR. COYLE: Yes, Senator Petris. That grew from  
2 the April change. Again, that was a function not of any  
3 policy interest or change on our part, but just what funding  
4 we had then available to deal with these applicants.

5 What we have done in the instance that you've just  
6 cited is to take a position that if you, a victim or an  
7 applicant, are not able to secure a local building permit, we  
8 will find the difference. That's basically the position that  
9 we will now take in response to that problem that you've  
10 identified.

11 SENATOR PETRIS: I think that will be very helpful.

12 They City's also suggesting that a different  
13 approach to your reduction of the number of places that  
14 people have to visit before the thing is done, and that is,  
15 since the money is allocated on a regional basis, or a  
16 city-by-city basis, so much for this area, why not let that  
17 local area do all the processing without having every single  
18 applicant go back to the state? They're local; they know the  
19 situation. Instead of eliminating one of the city spots,  
20 they suggest eliminating the state stop.

21 Does that make sense to you?

22 MR. COYLE: I'll say this, Senator, it was brought  
23 to my attention last week by a member of your staff, and  
24 think the proposal has merit.

25 We decided prior to even considering this option  
26 going the other way, but the goal was the same: to eliminate  
27 this extra hurdle.  
28



1           And what I would like to ask you, if I could review  
2 that proposal, and it is one that certainly sounds like it  
3 has merit. I just am unable to take a position.

4           SENATOR PETRIS: I appreciate you checking that  
5 out.

6           Another problem, it's been mentioned; you mentioned  
7 it in your letter to Senator Roberti, and Senator Mello  
8 mentioned it, so I don't want to over dwell on it, but that is  
9 the delay in funding for emergency shelters after an  
10 application's been approved. There's one in my district in  
11 particular that got a letter in August of last year saying,  
12 "We're going to send you \$160,000." They in turn informed  
13 the other authorities who come up with matching funds that  
14 they're ready to go, they're receiving the money, and to this  
15 date the money hasn't been sent.

16           Now, I don't know if that's part of the financial  
17 crunch you're talking about. I assume that when the letter  
18 goes out, that money's actually set aside for that purpose,  
19 but it hasn't been coming through.

20           I understand that's not unique to the area I'm  
21 talking about. That's happened in other parts of the state.

22           I would think that once the agency says, "Your  
23 application is granted. You're going to receive X dollars,"  
24 that it shouldn't take very long to send the check, instead  
25 of constantly telling them, "The check's in the mail."

26           MR. COYLE: That's right.

27           The situation that you have identified has occurred  
28





1 in other situations as well.

2 The delay in this case is attributable to a  
3 potential violation of the existing regulations, and that is  
4 something that I haven't gotten into with regard to ESP, the  
5 Emergency Shelter Program.

6 But the reasons the Women's Refuge application has  
7 been delayed -- although we did recently send them a contract  
8 -- is this -- this problem of what's called supplanting.  
9 That would -- it's prohibited in the law with one exception  
10 that you pay down the debt of a sponsor's existing -- pay  
11 down the debt of a building for which the existing sponsor  
12 holds the note. And that, in this instance, has to be  
13 resolved. So, even if we've got -- we did get the contract  
14 out to the Women's Refuge after your staff brought it to me  
15 attention, and there was no reason, good reason, for it being  
16 delayed as long as it was. But there is another another  
17 problem with that particular project, and that's why it got  
18 put in the delay basket or the delay track.

19 SENATOR PETRIS: That's the legal problem.

20 MR. COYLE: Because of this issue of supplanting,  
21 and it's affecting -- the good news with the ESP program is,  
22 last year we funded 142 applications, and 90 percent of those  
23 are moving on track in terms of getting the money out in a  
24 reasonably orderly time.

25 We certainly can improve the speed with which we  
26 get the money out. There's no question about that. But  
27 there are these 15 or 20 or so individual projects that  
28



1 they've gotten a lot of correspondence about in recent days  
2 that we may not resolve until we overcome some legal or  
3 regulatory problems. So, unfortunately, Women's Refuge is  
4 affected by that, as are a couple of others.

5 The good news on that side, however, is that after  
6 giving them some review, there was a situation in San Pedro,  
7 there was a situation in, I believe it was, Santa Maria or  
8 Santa Barbara, where we did take a look at the arm's length  
9 transaction, or whether it was the identity of interests  
10 involved in the original purchase of the property. Or, in  
11 the case -- that was San Pedro. Or, in the case of the Santa  
12 Maria proposal, where the existing local funds were going to  
13 be withdrawn and it would put the existing program at risk,  
14 we have opined that that isn't appropriate. It would be an  
15 appropriation expenditure on our part to step in and pay the  
16 difference.

17 SENATOR PETRIS: Does the fact that they have a  
18 contract save them from the loss of the matching funds? Is  
19 that enough to tie into the matching funds?

20 MR. COYLE: I'm not sure I know which matching  
21 funds you're referring to, unless it's the federal program.

22 SENATOR PETRIS: The federal.

23 MR. COYLE: That depends on the individual  
24 contract. They may have set up a proposal where they're  
25 going to match our -- our contribution with some other  
26 source. And that certainly would -- again, if the underlying  
27 proposal violates a -- potentially violates a state  
28



1 regulation, then we have to set that one over here and begin  
2 to ask some questions about whether we have an approveable  
3 activity or not.

4           SENATOR PETRIS:° I'd like to ask about two other  
5 things regarding the statutes that I carried, see what their  
6 current progress is.

7           One is the self-help program for helping people  
8 build their own homes. I carried that for sometime, and  
9 Senator Seymour helped me on a couple of occasions, was able  
10 to get approval from Governor Deukmejian at the time for a  
11 lot more money. But I've kind of lost track of where it is  
12 now.

13           It's been an absolutely marvelous program, when the  
14 state provides a foreman that helps the family build its own  
15 house and helps considerably in the private financing as  
16 well.

17           Do you have any update on that? I know you're new  
18 on this, and there's a lot of different programs going on.

19           MR. COYLE: That's clearly one of the success  
20 stories of the Department or of the interest that the  
21 government has taken in affordable housing. It's a home  
22 ownership program, as you say. It invests what equity --  
23 invests the work of the actual residents in developing home  
24 ownership of housing.

25           We were funding primarily through our program, and  
26 it wasn't -- it wasn't bond-financed, but funding that was  
27 coming through an account, the name of which escapes me at  
28





1 the moment. But we have spent all that was allotted to us  
2 for the program.

3 The examples of this are terrific. I've been to  
4 three individual self-help programs. It's a -- we have one  
5 down here, Habitat for Humanity. I went down to Oak Park and  
6 participated. It was a joint venture activity; involves the  
7 California Housing Finance Agency. That's where a lot of the  
8 state funding comes from.

9 There was a terrific program, 26 homes, in Napa,  
10 the City of Napa, that ended up being so successful -- I  
11 talked about, you know, the fear that residents, existing  
12 residents, have of affordable housing. Pioneer Village was  
13 so successful in Napa with these 26 homes and 96 children on  
14 this one block, that it loosened up the political -- local  
15 political's concern about affordable housing. Used the same  
16 nonprofit sponsor that was successful in the Pioneer Village  
17 project and provided a piece of property, a four-acre piece  
18 of property, for some multi-family rental housing.

19 So, it was -- it almost served as a wedge, Senator,  
20 to help open up some thinking --

21 SENATOR PETRIS: Very good.

22 MR. COYLE: -- dealing with affordable housing.

23 I happen to be one of its biggest fans. I think,  
24 if we're successful on SB 593, that the existing home  
25 ownership program within that, which is right now designed to  
26 go to the California Housing Finance Agency, can support a  
27 continuation of the self-help program.  
28



1           SENATOR PETRIS: How much money is in that bill?

2           MR. COYLE: I believe it's a 45 million set-aside  
3 for home ownership, and I think all the details on how  
4 that'll be divided up --

5           SENATOR PETRIS: Yes.

6           The other one, you mentioned the quality of the  
7 local nonprofits who are doing a lot in this kind of --  
8 generally for affordable housing.

9           The Housing Partnership Program, which the state  
10 works, your outfit works, with local nonprofits and public  
11 agencies to expand the housing facilities, is that still  
12 alive and well?

13          MR. COYLE: Yes. I think you're referring to the  
14 California Housing Partnership, which is a -- created by the  
15 Legislature.

16          I think -- Helen Dunlap is the Executive Director.  
17 I think she is concentrating her efforts in dealing with this  
18 preservation problem that is going to be hitting the state  
19 with some force, frankly, in -- over the next two-three  
20 years. This preservation issue, as you know, Senator,  
21 involves previously federally funded programs whose use  
22 restrictions in terms of low-income benefit are running out,  
23 the 20-year anniversary, and a lot of these property owners  
24 are sitting on very valuable land.

25          SENATOR PETRIS: They want to move back.

26          MR. COYLE: And they may, that's right, just opt  
27 out, prepay their 40-year mortgage, and there we have some  
28



1 assisted families running the risk of losing their --  
2 families and individuals losing their housing.

3 The federal government is part of -- that 1990  
4 federal authorization did produce a program that was designed  
5 to prevent any displacement, any -- not necessarily preserve  
6 existing structures, but to make sure that any residents that  
7 might be affected by this potential would have a decent place  
8 to live.

9 I think the benefits of that that are provided for  
10 in that law are generous enough that in most cases, an owner  
11 will either opt for the federal benefits or sell to a  
12 qualified purchaser to maintain the property for another 20  
13 or 30 years as low income.

14 But we are concerned that in some markets where the  
15 price appreciation has been so dramatic, that it'll be  
16 certainly much less hassle for the owner, because of all  
17 these hoops that they're going to be required to jump  
18 through, they may just opt to get out of the program and take  
19 their building with them to use it for highest -- its highest  
20 and best use.

21 This is where the California Housing Partnership,  
22 in getting qualified buyers, in helping determine how best to  
23 deal with those difficult situations -- Helen is focused on  
24 that, even though her charter is broader, and I should let  
25 her testify in her own behalf. But we've met several times.  
26 In fact, we are to be getting together very soon to put a  
27 preservation handbook -- the Department is developing a  
28





1 handbook for localities to use: Here's what you do if you  
2 have one of these projects in your community. And Helen is  
3 sort of the back end of that. She's the facilitator. She'll  
4 be trying to hook the interested parties up to see if we can  
5 strike a good deal.

6 SENATOR PETRIS: Thank you.

7 Thank you, Mr. Chairman.

8 CHAIRMAN ROBERTI: Thank you.

9 Is there anyone -- Senator Mello, you have a  
10 witness.

11 SENATOR MELLO: Judy Tankersley drove up from San  
12 Juan Bautista, and I asked her to come here because she came  
13 to a Town Hall meeting of mine, and she does have a time  
14 problem, wants to get back. Is that a problem?

15 I invited her to come here today. What happened,  
16 for about a year she said, "I want to go see Senator Mello,"  
17 and her husband said, "No, don't bother."

18 So finally, six months later, according to her, she  
19 said the same thing, so I had this little notice in the paper  
20 that I was having a Town Hall meeting. She apparently told  
21 her husband, "I'm going to go see Senator Mello."

22 So, I wasn't able to help her directly, but I  
23 invited her to come here today because her problem is  
24 directly related to CalDAP.

25 Mr. Chairman, may I introduce her?

26 CHAIRMAN ROBERTI: Yes, please.

27 SENATOR MELLO: Mrs. Tankersley.  
28



1 CHAIRMAN ROBERTI: Please give your name.

2 MS. TANKERSLEY: My name is Judy Tankersley.

3 And my problem is CalDAP. Our home was severely  
4 destroyed in the earthquake of April, 1990. That wasn't very  
5 highly publicized, but it did a lot of damage in the area  
6 where we live, which is on Chittendon Highway or Highway 129  
7 in San Benito County.

8 In May, between May 1st and May 15th of 1991,  
9 CalDAP received our application and blueprints for a new  
10 home. I had heard nothing between May and the next-to-last  
11 week in October. I had heard nothing from them at all.

12 I called the next-to-the-last week in October of  
13 1991; found out from the loan officer there at the time that  
14 we had been denied the loan, but that it was appealable. He  
15 said he would be sending out a letter to that effect the end  
16 of the week.

17 Three weeks later I received a letter confirming  
18 our phone conversation. In the letter it said we could get  
19 ahold of a Mr. Michael Carroll with CalDAP to appeal the  
20 denial of the loan.

21 On December 13th, Mr. David Bosworth, who works as  
22 a consultant to the City of Hollister, sent a letter to  
23 CalDAP addressed to Mr. Herman Schaefer, who was the loan  
24 officer at that time. In October, I talked to a Mr. Carl  
25 Baskins, who was loan officer. By December 13th, they had  
26 another loan officer there by the name of Don Questo, who, to  
27 my knowledge, is still there.  
28



1           In the letter dated December 13th, our family,  
2 along with some other applicants that had been denied loans,  
3 Mr. Bosworth asked, "What is the procedure these people have  
4 to go through in order to qualify to reapply for a loan?"

5           As of yesterday afternoon, he has not had one  
6 response to that letter.

7           Last Tuesday, I called CalDAP. I asked to speak to  
8 Mr. Don Questo. He was not in his office. I asked to speak  
9 to Mr. Michael Carroll; he was not in his office. I left a  
10 message: Please have Mr. Questo contact me. I left my name  
11 and my phone number, and he is the loan officer.

12           Wednesday morning, I had not received a telephone  
13 call, so I called and just asked to speak to Mr. Carroll. He  
14 was in a meeting. I said, "Fine." I left my name and phone  
15 number.

16           On Thursday I called, and the phone was answered by  
17 a telephone answering machine -- evidently, no one was in the  
18 office. I left my phone number again.

19           On Friday morning, at ten minutes after 9:00, I  
20 called and I left my name and my phone number again, because  
21 nobody was available. Mr. Carroll was either out of his  
22 office or in a meeting.

23           Yesterday morning I called to speak to Mr. Don  
24 Questo, who I had contacted last Tuesday, and left my name  
25 and phone number. I have not heard from him.

26           I haven't heard from anybody from CalDAP.

27           Now, late Friday afternoon, Mr. Carroll did call  
28





1 me. He told me what I had to do in order to resolve the  
2 reasons why the loan was denied in the first place. But the  
3 letter dated December 13th, why was there no response to  
4 that? They had another letter sent to them last Friday  
5 morning, of which I had been sent a copy of, asking the same  
6 thing but just pertaining to my family.

7 We have been out of a home since April 19th, 1990.  
8 San Benito County condemned our house. We cannot live in it.  
9 It's been almost two years.

10 There is my husband; we have three children. We  
11 live in the home with his oldest son and his two children and  
12 myself. That's eight people. We are now living in a double  
13 car garage that has been converted to living quarters.

14 San Benito County condemned the house April 18th,  
15 but they also gave us permission to convert the garage to  
16 temporary living quarters. Two years, I don't think, is  
17 temporary.

18 Eight people in that small space, it's almost  
19 unimaginable for this length of time.

20 Now, we did go through the SBA. We did go through  
21 FEMA. FEMA sent us a check for \$1500 for rent, to rent a  
22 place in town, and it was for three months' rent. We could  
23 not find a place to house eight people for \$500 a month.

24 What we did, we contacted FEMA, and I asked them  
25 could we please use this money to help convert our garage  
26 into living quarters? We had to have plumbing done, had to  
27 have electrical done; there was outside damage done by the  
28



1 earthquake to our water pipes, to our holding tank, that had  
2 to be repaired.

3 They called me back the next day and said, "Yes,  
4 you may use that check for that purpose, but if you do that,  
5 that is all the assistance that we can give you."

6 Had we moved into town and rented a house, they  
7 would have paid our rent. Not for two years, I'm sure, but  
8 we would have gotten more than \$1500. But we wanted to stay  
9 on our property because we couldn't live in our home, but all  
10 of our possessions were in there. We can go in the house at  
11 our own risk.

12 So, seeing as we wanted to live on our property and  
13 to stay there, we got \$1500 out of FEMA, which we thought:  
14 Fine, that's really going to help a lot. Let them use the  
15 other money that they would have been giving us each month  
16 for rent, let them use that for someone else to help them.

17 By being so big-hearted and considering other  
18 people, and by wanting to stay on our property, and the  
19 hang-ups that we have had trying to deal with CalDAP -- and  
20 other agencies too; it's not just them. It's just that they  
21 were the last one. They've taken the longest -- it's been  
22 almost two years, and we're still living in a garage.

23 This last August, I finally was able to get in a  
24 sink and a stove in the garage. I had been going into the  
25 house to wash dishes and into the house to cook half the  
26 time, because we needed gas -- a gas line run into the garage  
27 and ventilation done. And we've just kind of been putting it  
28



1 off and putting it off, hoping, hoping, you know, maybe next  
2 week, maybe next month.

3 But it has really gotten to the past ridiculous  
4 point. People keep telling me, "Have patience; have  
5 patience." I'm sorry. My patience is gone.

6 And I would like to be treated with a little  
7 respect. When I call and leave my name and phone number for  
8 someone to return their call to me, I may not get ahold of  
9 them that first time I call; that's fine. They have other  
10 things to do than to sit around and wait for their phones to  
11 ring. I realize that. But why would it take from Tuesday to  
12 Friday in order to have your call returned? Why would it  
13 take from Tuesday until the following Monday? And you still  
14 don't get anything.

15 I really don't think that's the way to run a  
16 company. And they've had six loan officers in approximately  
17 the past year. From October until December, there were three  
18 loan officers in that office. There was a Mr. Carl Baskins,  
19 a Mr. Herman Schaefer, and a Mr. Don Questo, and I think  
20 that's really bad.

21 And there's a lot of people out there that are  
22 still waiting. I'm only one.

23 Thank you.

24 CHAIRMAN ROBERTI: Thank you very much.

25 Senator Mello, do you want to address the point?

26 SENATOR MELLO: She said April, 1990. I want to  
27 let the Committee know that the major 7.1 earthquake happened  
28





1 on October 17th, 1989, but FEMA certified that these  
2 aftershocks would be counted as part of the overall Loma  
3 Prieta earthquake.

4 So, she is eligible under the law for the same  
5 treatment as if this would have happened on October 17th.

6 Thank you very much, Judy.

7 MS. TANKERSLEY: Thank you.

8 MR. COYLE: Senator Mello, there's just no excuse  
9 for not returning someone's phone call, and it just won't --  
10 it can't be tolerated, especially when whatever their problem  
11 is -- whether victims of natural disaster --

12 SENATOR MELLO: Could you speak into the  
13 microphone?

14 MR. COYLE: It's a little hard to -- to say with  
15 much control that you have to do something decent, I don't  
16 care who you are, and basically returning phone calls. And  
17 that we haven't addressed this particular individual, her  
18 problems, in a timely way, at least in terms of responding.

19 It's just that bureaucracy that is so easy to  
20 criticize, insensitive bureaucracy that's easy to criticize.

21 I'm not happy about hearing that.

22 SENATOR MELLO: I appreciate your comments.

23 MR. COYLE: As far as her specific problem, Senator  
24 Mello, I'm not sure of all the details of it, or of any,  
25 frankly, and I would like very much to look into it. I've  
26 taken notes about the testimony.

27 MR. COYLE: Perhaps Judy can get with one of your  
28



1 staff and give you --

2 MR. COYLE: I'd be happy to visit with her myself  
3 and get more information and look into it.

4 SENATOR MELLO: Thank you very much, Mr. Chairman.

5 CHAIRMAN ROBERTI: Is there any other witness?  
6 Mr. Torres.

7 MR. TORRES: I'm not going to wear out my welcome,  
8 Members.

9 We're not here to oppose Mr. Coyle. He seems to be  
10 a very deliberate person.

11 However, in his deliberateness, there's a lot of  
12 things that have been overlooked. There's no judgment call  
13 on my part as to whether that's intended or not. It's just  
14 the job is an extremely difficult one.

15 However, when he comes in identifying problems in  
16 the Department, he cites no management plan, the need to hold  
17 employee performance accountable, no formal training program,  
18 the need to be responsive to constituents.

19 The scenario that was painted by this poor lady  
20 from San Benito County, she has had the gumption and the  
21 commitment to come before you and be persistent in raising  
22 the concerns. Those concerns are simply very reflective of  
23 many, many others who simply have not come forward.

24 I would like to recommend that this Rules Committee  
25 request three things of Mr. Coyle before he gets confirmed,  
26 or as part of his confirmation.

27 That the Department present to the Rules Committee  
28



1 a plan for improving the delays in disaster funding. The  
2 scenario that was painted by the individual from San Benito  
3 County, the circumstances that we're dealing with here in the  
4 Oakland disaster, the ones that persist with Loma Prieta,  
5 these are -- these cannot simply be raised today and then  
6 dropped. They're not individual cases; they are quite  
7 systemic in certain situations, and I think there has to be  
8 some response by the Department that is proactive. That  
9 says, "This is what we're going to do in order to avoid these  
10 things from happening from now on." Because we will be  
11 having more disasters as time goes on.

12 Second concern is the issue Mr. Roberti talks about  
13 with Santa Ana. Santa Ana is simply the first one out there.  
14 We are going to have many ordinances dealing with  
15 overcrowding, dealing with the extended family issues. We  
16 will have them because, as Mr. Coyle testifies, there is not  
17 enough housing in the State of California. Until we have  
18 enough housing, you can rest assured, you're going to have  
19 these issues.

20 I don't think a way to deal with it is to simply  
21 file an amicus brief or consider filing an amicus brief to  
22 stop -- to oppose the City of Santa Ana from doing it.  
23 There's going to be other cities; there's going to be other  
24 counties.

25 I think there has to be, again, a proactive  
26 position that the State of California takes.

27 Now, if Mr. Coyle believes that it is with  
28





1 legislation that needs to be enacted, then I think that  
2 direction and leadership should be coming from the  
3 Department.

4 I once again request that as part of Mr. Coyle's  
5 confirmation, the this Committee request that he establish  
6 some kind of an ad hoc or consultation process that provides  
7 recommendations to the Legislature as to how to deal with an  
8 issue of overcrowding until such time that there is enough  
9 housing that we can minimize these types of issues. Because,  
10 we will be having them. They will be culturally based,  
11 oftentimes with Asians and Hispanic families, and they may be  
12 well based in the example of the individual from San Benito,  
13 who's not a minority, but simply has a big family and is  
14 living in a garage.

15 So, these are realities that I don't think it's  
16 good to simply say we're going to deal with each one  
17 individually. I think there has to be a policy and there has  
18 to be a proactive position.

19 The third concern is with regards to -- we've heard  
20 a lot of concerns from Mr. Roberti and his district, Mr.  
21 Mello and Mr. Petris -- a concern that is extremely been  
22 neglected for years and decades in this state has been the  
23 need for farmworker housing. Mr. Coyle was quoted  
24 extensively in the almost awarding winning series that the  
25 Sacramento Bee did on farmworkers. They spent a whole --  
26 probably half a series, an article, on the issue of housing  
27 and farmworker housing.  
28



1           The scenario that the individual from San Benito  
2 painted to you, of having to go from the garage into her  
3 house to make food and to use the water, is one that is  
4 almost the norm for many farmworkers in this state. It has  
5 been the norm for generations.

6           I was a farmworker since I was ten years old. My  
7 grandparents were; my parents were. I speak from a personal  
8 experience, but I also speak from simply a humane experience.

9           Again, I don't and I am not aware of any proactive  
10 initiatives that the Department has begun or has even  
11 proposed on a preliminary basis to deal with the issues that  
12 were identified in the Bee series.

13           We do find a lot of good intentions in the good,  
14 positive comments by Mr. Coyle, the Governor, and the  
15 Governor's spokesman, but what we don't have is, again,  
16 something of substance; something to be held accountable for;  
17 something to shoot for; something to strive for.

18           We are not proposing and suggesting that money's  
19 going to fall out of the sky, and that you're going to build  
20 great houses for every farmworker that needs it. But we do  
21 have to know how we're going to be respond to these realities  
22 with what we've got. And I don't think that we have any  
23 blueprints here yet.

24           Again, I'm not aware of them. Perhaps Mr. Coyle  
25 has some in his mind. Perhaps he's already initiated a  
26 process to do some of those things as a result of the Bee  
27 articles, or even before the Bee articles.  
28



1           But as of today, I think it would be an extremely  
2 reasonable request to have these three issues, plus some  
3 additional ones on bilingual concerns about calling in, about  
4 -- we're concerned that the Department does not have enough  
5 bilingual personnel to respond to inquiries being made about  
6 housing, especially from farmworker and rural communities.

7           Again, it could be very much a budgetary problem,  
8 but I think it's important for us to know where we stand and  
9 what we can do with what we've got.

10          So, I would strongly urge the Committee to request  
11 in writing -- and I'd be more than happy to draft it for you  
12 all to consider it -- but I very much would like it to be  
13 part of the record and part of the follow-up that Mr. Coyle  
14 would be held accountable for providing this Committee and  
15 the Legislature as to how these three issues are going to be  
16 addressed with what the state has in resources right now.  
17 How they're going to be addressed and trying to improve  
18 whatever we can in these three areas.

19          I hope that someone will make that motion.

20          CHAIRMAN ROBERTI: Senator Petris.

21          SENATOR PETRIS: May I ask, what is our time limit  
22 here? I understand that Mr. Coyle was appointed in March.

23          MS. MICHEL: March 4th. We're getting up against  
24 deadlines on everything.

25          CHAIRMAN ROBERTI: We're up against the deadline.

26          SENATOR PETRIS: Well, I would make the motion to  
27 put the letter out. Even if everything doesn't come back in  
28





1 time, it would be part of the process.

2 I don't think you're trying to rush it at the  
3 expense of being thorough.

4 MR. TORRES: Right.

5 SENATOR PETRIS: Can I make that motion that we ask  
6 Mr. Torres to suggest a proposed draft that we can consider  
7 to Mr. Coyle?

8 CHAIRMAN ROBERTI: Yes, absolutely.

9 SENATOR PETRIS: He made notes.

10 CHAIRMAN ROBERTI: We can always hold the  
11 appointment on the Floor for two weeks, so we can vote on  
12 Mr. Coyle today, assuming that's what the Committee wishes to  
13 do, and still hold it for two weeks.

14 MR. TORRES: Thank you very much.

15 SENATOR MELLO: Mr. Chairman, may we add to Senator  
16 Petris' motion that that letter be printed in the Senate  
17 Journal?

18 SENATOR PETRIS: Sure.

19 CHAIRMAN ROBERTI: Senator Petris is so moving that  
20 the letter be drafted and be printed in the Senate Journal.

21 SENATOR PETRIS: Yes, I agree with that.

22 CHAIRMAN ROBERTI: Is there any opposition?  
23 Hearing none, such will be the order.

24 Is there any opposition in the audience? Do I hear  
25 a motion?

26 SENATOR BEVERLY: Move confirmation.

27 CHAIRMAN ROBERTI: Senator Beverly moves  
28



1 confirmation be recommended to the Floor.

2 The Secretary will call the roll.

3 SECRETARY WEBB: Senator Beverly.

4 SENATOR BEVERLY: Aye.

5 SECRETARY WEBB: Senator Mello.

6 SENATOR MELLO: Aye.

7 SECRETARY WEBB: Senator Petris.

8 SENATOR PETRIS: Aye.

9 SECRETARY WEBB: Senator Craven.

10 SENATOR CRAVEN: Aye.

11 SECRETARY WEBB: Senator Roberti.

12 CHAIRMAN ROBERTI: Aye.

13 The vote is five to zero; confirmation is  
14 recommended to the Floor.

15 MR. COYLE: Thank you, Mr. Chairman and Members.

16 CHAIRMAN ROBERTI: We should break for lunch,  
17 coming back at 2:00.

18 [Thereupon the luncheon recess was taken.]

19 --oo0oo--  
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A-F-T-E-R-N-O-O-N P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: The Committee will come to order.

We left off with Mr. Shumway.

Are there any other witnesses who wish to testify? Ms. Siegel. We had another one, but it's a no-show.

MS. SIEGEL: Senators, my name is Sylvia Siegel, for those who don't know me. I'm the founder and first Director of Toward Utility Rate Normalization, and the perpetrator of a number of fantastic innovations that benefit residential customers in California, not to mention huge savings.

I have been in the regulation business since 1973. I have been a people's advocate all my life.

I am currently, even though I've retired from TURN in July of 1989, I have currently started a new consumer organization to help the distressed cable t.v. users, and hopefully someday, cable t.v. will be under the jurisdiction of the PUC. So, I'm being anticipatorious.

I'm also wearing my hat as a passionate regulator in evaluating the qualifications of this candidate. I don't know Mr. Shumway well. I have to tell you, I'm an atheist liberal Republican.

[Laughter.]

MS. SIEGEL: I know I'm dealing with a religious conservative Mormon, but I can deal with him because when I





1 talk to him and ask him a question, I know I get an honest  
2 answer. I don't always -- he doesn't always have to agree  
3 with me. I know I can depend on what he says.

4 CHAIRMAN ROBERTI: I'm not walking out on you,  
5 Ms. Siegel. I have talked to you.

6 Senator Craven, I'm giving you the Chair. I have  
7 to answer a phone.

8 SENATOR CRAVEN: Very well.

9 Could you do business with a God-loving, moderate  
10 Republican Catholic?

11 [Laughter.]

12 MS. SIEGEL: Touche.

13 SENATOR CRAVEN: Go ahead, dear, please.

14 MS. SIEGEL: Thank you, Senator, happily.

15 I have talked to Commissioner Shumway a few times.  
16 I've examined his record.

17 I wouldn't give you two cents for his Congressional  
18 record. My friends will all disown me, and my head is on the  
19 block. I have to tell you, I'm sticking my neck way out to  
20 support this conservative Republican, and even a moderate  
21 Republican, but I do it because I do it on the basis of the  
22 issues.

23 I think Commissioner Shumway has displayed great  
24 understanding of the issues involved in the last eleven or  
25 twelve months, and more importantly, he has served to unify  
26 the staff, who are distressed, terribly distressed because of  
27 the events of the last four years. I would say their morale  
28



1 is lower than a snake's belly.

2 Since Mr. Shumway and Mr. Fessler have appeared on  
3 the scene, the morale has picked up mightily. I think both  
4 of these people will regulate.

5 And I have to tell you, while I'm a young 73 going  
6 into another career, and my knees don't work so well, I can  
7 still kick ass.

8 [Laughter.]

9 MS. SIEGEL: So, if this Commissioner doesn't carry  
10 out his responsibility --

11 CHAIRMAN ROBERTI: I'm trying to figure out if the  
12 press is going to quote you or not.

13 [Laughter.]

14 MS. SIEGEL: If this Commissioner doesn't carry out  
15 his responsibilities the way I think he should, he will hear  
16 from me in no uncertain terms. And I have a media list of  
17 500 people, and over the years, everybody likes my juicy  
18 one-liners, so I can develop some more.

19 So, Norman Shumway, you better toe the mark.

20 I think he will. I think it's important to get  
21 this agency back to top shape. I recall the days of the  
22 Commission under -- you should excuse the expression --  
23 Governor Pat Brown, when we had the best Public Utilities  
24 Commission in the country. I want it restored to that status  
25 again, and it can be.

26 We have a terrific staff. They need to be given  
27 support. They need to know that we really mean to regulate  
28



1 and not deregulate.

2 And I'm not too concerned about the issue on multi-  
3 languages. I think that in our diverse state and our  
4 operation of the PUC, that's a well-established principle.  
5 There's no way you can unhinge it. I don't worry about that.

6 I do worry about how costs are allocated, and  
7 you've heard me speak on that. And you'll hear more if that  
8 ever happens the wrong way.

9 But I think it's important to get this agency up  
10 and going, and in great spirit, and in great consideration of  
11 some very vexatious issues that are facing all of us now.

12 So, I really am pleased. I don't know why I'm  
13 here. I should be home working on cable, but I feel very  
14 keenly about this agency and this issue, and I'm sticking my  
15 neck out.

16 So, Norm Shumway better not disappoint me.

17 Thank you very much for your consideration.

18 CHAIRMAN ROBERTI: Thank you, Ms. Siegel, very,  
19 very much.

20 Is there anyone else who would like to testify for  
21 or against? Senator Patrick Johnston is here, the record  
22 will note.

23 Do I hear a motion?

24 SENATOR CRAVEN: So move.

25 CHAIRMAN ROBERTI: Senator Craven moves that the  
26 confirmation be recommended to the Floor.

27 The Secretary will call the roll.  
28





1 SECRETARY WEBB: Senator Beverly.

2 SENATOR BEVERLY: Aye.

3 SECRETARY WEBB: Senator Mello.

4 SENATOR MELLO: No.

5 SECRETARY WEBB: Senator Petris.

6 SENATOR PETRIS: Aye.

7 SECRETARY WEBB: Senator Craven.

8 SENATOR CRAVEN: Aye.

9 SECRETARY WEBB: Senator Roberti.

10 CHAIRMAN ROBERTI: Aye.

11 The vote is four to one; confirmation is  
12 recommended to the Floor.

13 Congratulations.

14 CONGRESSMAN SHUMWAY: Thank you.

15 CHAIRMAN ROBERTI: The next confirmation is that of  
16 Mr. John G. Lockwood, Director of General Services.

17 Mr. Lockwood, we'll ask you what we ask all the  
18 Governor's appointees -- I don't think we've heard anything  
19 yet -- and that is why you feel qualified to assume this  
20 position?

21 MR. LOCKWOOD: Senator, upon graduation from high  
22 school in 1949, I went to work in the City-County  
23 Administration Building in San Diego as a blue-collar worker,  
24 and 42 years later, in March of last year, I retired from the  
25 City of San Diego as City Manager.

26 In the last 20 years of that 42-year career, I  
27 served in the City Manager's office in San Diego. In that  
28



1 role, I had responsibility for the supervision of the Police  
2 Department, a print shop, an equipment division, our real  
3 estate operation, architectural and engineering, building and  
4 grounds.

5 When I was contacted early in '91 about state  
6 service, in looking at the various agencies in state  
7 government, it seemed to me that General Services  
8 Department, because they have those similar functions, was  
9 the obvious fit, and I was pleased to accept that  
10 appointment.

11 Also with City Manager and Assistant City Manager,  
12 I was either the Deputy Director or the Executive Director of  
13 both the Redevelopment Agency in San Diego and the Housing  
14 Authority in San Diego because the Mayor and Council of San  
15 Diego had constituted themselves as the Redevelopment Agency  
16 and the Housing Commission for the City.

17 So, I think what I've been doing for the past 40  
18 years is very similar to what I'm doing now, albeit it's at a  
19 different level and the numbers change a little.

20 With that, I'm here to respond to any questions you  
21 might have.

22 CHAIRMAN ROBERTI: Thank you, Mr. Lockwood.

23 Are there any questions? Senator Mello.

24 SENATOR MELLO: Thank you, Mr. President.

25 I'll start out by saying, I think Mr. Lockwood has  
26 certainly increased the effectiveness of this Department as  
27 pertains to the State Capitol here and the operations of this  
28



1 building and other state buildings.

2           Concerns I have are ongoing problems, I think,  
3 within your Department, mainly the Real Estate Acquisition  
4 Division in my area and through other parts of the state.  
5 There's been money budgeted for parks, programs that have  
6 never been completed. Some have taken two-and-a-half to  
7 three years, and by the time they got around to completing  
8 them, the price has gone up. They failed to realize what the  
9 market value is by coming up with really values that are so  
10 far off the mark that we've lost those opportunities.

11           The second point is the -- I don't know whether --  
12 what this situation amounts to, but in Santa Cruz County, for  
13 one example, three state building, who of which -- well,  
14 first of all, I'll start out by saying you're aware of the  
15 earthquake that hit the downtown area of Santa Cruz that  
16 demolished about 60 percent of the commercial area, plus  
17 houses.

18           Your Department either had failed to work with the  
19 Redevelopment Agency in letting them know what state  
20 buildings were being contemplated on moving, and they found  
21 out really when it was too late. So, the EDD office is now  
22 relocated in another city, in a high-priced regional shopping  
23 area, which I think is away from where the clients are. The  
24 Franchise Tax Board office has been relocated. Now we're  
25 trying to salvage the Coastal Commission office, which needs  
26 -- which has been in Santa Cruz since its inception.

27           And they tell me from -- I don't know if there's  
28





1 anyone here from Santa Cruz County -- we have it mainly in  
2 correspondence that their most recent request, your  
3 Department's even unwilling to let them know when these  
4 rental agreements are coming due so they can start putting  
5 together a system to help keep these offices in the areas.

6 And I think it's a complete bit of unresponsiveness  
7 from your Department to cities that have a great stake in  
8 whether or not an office is going to continue serving the  
9 public there, or whether just, without anybody knowing,  
10 suddenly the lease is due and it's moved on out.

11 The other questions come to our attention, I think,  
12 there are people here to testify who have been opposed.  
13 Well, one being the National Association of Minority  
14 Contractors, and the United Minority Business Interpreters of  
15 California, Society of Hispanic Professional Engineers. I  
16 guess their complaint is that your Department has failed to  
17 carry out the law which was passed by the Legislature  
18 requiring that 15 percent of awards in contracts be awarded  
19 to minority groups plus women.

20 And I guess if they are here to testify, they can  
21 probably communicate that better than I can.

22 The law right now requires 5 percent minority and  
23 women business enterprise participation goal. That, of  
24 course, is current law.

25 And the Department of General Services has  
26 responded that the majority to state agencies, including your  
27 Department, are very slow in implementing this bill, AB 1933.  
28



1           You and I have talked about it, and it's just like,  
2 I think, Mr. Coyle's coming in and finding a Department that  
3 is in disarray; I think your Department is even worse off, at  
4 least when you came in. You can I have talked about this.

5           There's a lot of rebuilding to do, I think, in  
6 order to get it to be responsive to the needs of the state.  
7 And I brought out some of these frustrations before, and I  
8 think -- plus your Real Estate Division. I see no way where  
9 their attitude is going to change to positively respond to  
10 people, rather than carrying on in the present manner from  
11 which they're operating on. You know, they need some real  
12 trimming down there, because they're arrogant, number one.  
13 And they're just unresponsive.

14           I don't know, what do we do? I mean, what does a  
15 Legislator like myself do in dealing with people like that  
16 who are protected by civil service?

17           In one case, a piece of property was finally agreed  
18 to be sold to the state in Monterey County. I sort of acted  
19 as an intermediary because this was a coastal property that  
20 we wanted to gain title to. When they got through reaching  
21 agreement, when they signed the deed, they would not deliver  
22 it to General Services. They Federal Expressed it up to me.  
23 They were willing to give me the deed. I felt I was very  
24 nervous in accepting it, because I didn't want to have this  
25 in my possession, so I had my staff call the messenger  
26 service, and we immediately sent it over to your Department  
27 there.  
28



1           That's just an example of how they've turned off so  
2 many people around the state.

3           So, I guess these are just a lot of general  
4 statements, and you know, you can respond to whatever you  
5 want, but I think that -- I hope you recognize the failures  
6 in this Department and your willingness to make some major  
7 corrective changes in order to get it to work in the best  
8 interests of the State of California.

9           MR. LOCKWOOD: Is it appropriate I respond now, or  
10 should I wait for the other testimony?

11          CHAIRMAN ROBERTI: I think you can respond now.

12          MR. LOCKWOOD: As to the real estate activity in  
13 the State of California -- and I don't mean these comments to  
14 criticize a prior administration or any predecessors -- but  
15 the -- Governor Wilson, as part of his program, indicated  
16 that he was not satisfied with the real estate approach being  
17 taken by the State of California and issued an Executive  
18 Order last fall which did a number of things, but one of the  
19 things it did, it completely restructured the real estate  
20 activity.

21          I'm not criticizing any employees within that  
22 organization, past or present, but it has been restructured.  
23 The -- all the people are not in place but will be within the  
24 next thirty days, and it's a whole new and different effort.  
25 And I think we're going to be responsive to real estate needs  
26 of the state.

27          Regarding Santa Cruz, you did mention that to me,  
28





1 and I did have a chance to review that. The Request for  
2 Proposals for office space in Santa Cruz were first solicited  
3 in late 1989. There were some requirements in terms of  
4 square footage and accessibility. The responses that were  
5 received by the Department were such that a second offering  
6 went out in either '90 or early '91. As a result of that, a  
7 lease was entered into for 15,000 square feet for EDD.

8 As far as the criticism about not being accessible  
9 to the redevelopment agencies, as I indicated in my opening  
10 remarks, I was an Executive Director for 20 years. There's  
11 not a city manager or redevelopment director in the State of  
12 California that can't pick up a phone and call me any time  
13 they wish. And at your urging, the Redevelopment Director of  
14 Santa Cruz and I did get together. I had a chat -- we're on  
15 the same page.

16 I think this administration is committed to  
17 redevelopment areas throughout the State of California, and  
18 to the extent that the state can assist in the viability of  
19 urban areas in this state, that's a role, that's a charge we  
20 have, and we intend to do that. And I think our response was  
21 satisfactory.

22 As a matter of fact, on the Coastal Commission  
23 office, which you were particularly interested in, that one  
24 -- it wasn't my doing -- but that one is ready to go on the  
25 street either next Monday or a week from Monday and fast  
26 track within three weeks. The search area -- there again, it  
27 was not my doing -- but the search area has been confined to  
28



1 the Redevelopment District within the City of Santa Cruz. If  
2 we get any responses, and I'm sure we will, it's assured that  
3 that particular facility will be in the Santa Cruz area.

4 The second concern was AB 1933 and the state's  
5 efforts in terms of affirmative action. There are a whole  
6 series of issues there, and I did get copies of the  
7 correspondence that were supplied to you. If there's a  
8 particular area on that you'd like to explore, I'd be happy  
9 to do that.

10 But at this particular point, we are not where we  
11 would like to be in terms of complying with the 15 and 5. I  
12 could point out, over the last several months, things that we  
13 have done, and that is that we have appointed an advisory  
14 committee that work with us and with Members of the  
15 Legislature on both sides of the aisle in developing  
16 amendments to 1933, because the complaints are coming from  
17 both the majority and minority community regarding the  
18 problem in administering that particular legislation.

19 I know that you have some bills now that are before  
20 the Legislature that address some of those concerns, and I  
21 think whatever that end result is, the legislation will be an  
22 improvement and will make it easier for all parties.

23 We're committed to complying with the requirements  
24 of the legislation, whatever that legislation is. All I can  
25 assure you is, we'll be responsive.

26 SENATOR MELLO: The point is, there's no way to  
27 reverse. I mean, I think the community is unhappy with the  
28



1 fact that they're losing a 50,000 square foot facility such  
2 as EDD without -- and allowing the disarray of the downtown  
3 area that was hit by this natural disaster.

4 And the meeting that you held last week with the  
5 Redevelopment Director and the Mayor, former Mayor, of Santa  
6 Cruz, they send me a note back and they said:

7 "The City felt that the meeting  
8 was perfunctory. The City asked  
9 Lockwood if he would notify  
10 redevelopment agencies when the  
11 state offices in the redevelopment  
12 agency geographic region were  
13 planning to relocate. Lockwood said  
14 he couldn't really do that, but that  
15 the redevelopment agencies were free  
16 to contact any state department they  
17 wished to ascertain if the  
18 Department intended to move."

19 I mean, to me, that's really not cooperation.  
20 You're putting the burden on the local government, cities, to  
21 write letters to Mental Health and anybody else and say, "Are  
22 you planning to move so we can start planning with the  
23 forthcoming leaving?"

24 What are you afraid of not to work with these  
25 people, saying, "Yeah, we're going to be needing some space.  
26 We've outgrown our space," or "The rents are too high,"  
27 whatever the reason, try to work with them because their  
28





1 overall general plan calls for the viability of a city to  
2 function that way, especially after a disaster that they had.

3 I don't understand the reluctance on your part to  
4 say, "Well, this lease is up in two years, or one year."

5 MR. LOCKWOOD: No, there is absolutely no  
6 reluctance. As a matter of fact, the regional employee for  
7 that area has been in contact, I'm sure, since you got that  
8 note, and they are -- they will be supplying not just to that  
9 redevelopment director, but to other redevelopment directors  
10 where we know about anticipated needs within a geographic  
11 area. We'll alert those redevelopment directors so that they  
12 can take advantage of that.

13 I think what is misunderstood there is, the  
14 question was did I have any problem with the redevelopment  
15 agency contacting the various agencies of state government  
16 regarding what plans they might have. I said absolutely not.  
17 I wouldn't necessarily know that.

18 The Highway Patrol. The Highway Patrol this very  
19 afternoon was considering locating a Highway Patrol office  
20 somewhere in the State of California. I would know that at  
21 the point where they sent a request to my Department to  
22 obtain a lease or obtain property. But that might be six to  
23 twelve months after they started their planning process.

24 All I suggested to them was, I had no problem if  
25 they wanted to contact agencies directly to get in on the  
26 even earlier planning, because my agency doesn't participate  
27 in that. That would be the using agency that would initiate  
28



1 a request for space.

2 But I have no problem at all dealing with that.

3 SENATOR MELLO: Another case, and I'll bring it up,  
4 is in Seaside, California in Monterey. When the EDD office  
5 was about to be relocated, your Department went out and  
6 bought up three or four residential pieces of property in an  
7 R-1 Zone. Bought that property for the development of an EDD  
8 building, which is a commercial enterprise; it has to be in a  
9 commercial district if you want to respect local planing and  
10 zoning laws. Even though, I guess, we could take the  
11 approach that we pre-empt local city and planning, but I  
12 think we violate a lot of working relationship if we do that  
13 and not put an office in a commercial zone.

14 But they went because buying homes, I guess, is  
15 cheaper than dealing with commercial property, and we got  
16 into a real struggle over that situation. And I don't know  
17 why they do that.

18 MR. LOCKWOOD: I've been on the other side of that  
19 coin for 40 years, and I'm not familiar with that particular  
20 -- I don't know when that happened.

21 SENATOR MELLO: It happened about seven, eight  
22 years ago.

23 MR. LOCKWOOD: I'm not personally familiar with  
24 that.

25 SENATOR MELLO: I'm not blaming you on this.

26 The people you have there are Civil Service, and in  
27 my opinion, they have a history of being obnoxious and  
28



1 arrogant, and doing things that are really impractical. I'm  
2 talking just about your Real Estate Division.

3 MR. LOCKWOOD: I understand.

4 SENATOR MELLO: And, by golly, I just don't know  
5 how long this arrogance is going to go on. That's the way I  
6 perceive it to be.

7 MR. LOCKWOOD: I can tell you this, that, again,  
8 having been on the other side of the coin in local government  
9 for so long that my peers and my contacts over the years have  
10 been city managers. And whenever now Walter Slipe in  
11 Sacramento, I see him almost as often as I see my agency head  
12 working in Sacramento. And within other areas around the  
13 state, we are working with city managers.

14 Whenever we put a facility in a city, and if it's a  
15 strong mayor city -- there are four or five of those in the  
16 State of California -- we'll be working with those mayors'  
17 offices to make sure that what we do is consistent with the  
18 general plan for that particular city. That's just the  
19 policy of the Department.

20 SENATOR MELLO: I agree we should.

21 Well, I think that's all my questions. I just want  
22 to ask, Mr. Chairman, are the people in the front row going  
23 to testify on behalf of the minority businesses? Okay, then  
24 I'll forego any further questions in that regard.

25 CHAIRMAN ROBERTI: Thank you, Senator.

26 Are there any other questions?

27 Are there any witnesses in support? We have Mr.  
28





1 Gerald Johnson.

2 MR. JOHNSON: Good afternoon, Mr. Roberti and  
3 Members of the Rules Committee.

4 My name is Jerry Johnson. I'm the Managing Editor  
5 of the Small Business Exchange newspaper, publishing bid  
6 opportunities for minority women businesses and small  
7 business throughout the State of California.

8 And I came here to support Mr. Lockwood because --  
9 not because anyone asked me to, and not because I'm  
10 unfamiliar with the problems and the general service, in  
11 particular the Procurement Department. And there are many  
12 problems there that have been there for some time, and they  
13 need some direct and immediate attention in regards to  
14 delivering some goods and services to the minority women and  
15 business community.

16 And needless to say, that we have a severe problem  
17 in the State of California. Businesses are leaving the  
18 state. Businesses within the various -- minority business  
19 within the various communities are suffering because of the  
20 recession. So, obviously there's a determined effort to get  
21 a greater share of the goods and services from places such as  
22 Procurement in General Services.

23 I was invited to the advisory board meeting that  
24 Mr. Lockwood chaired. And I sat there for about an hour-and-  
25 a-half, two hours, in a discussion dealing with the problems  
26 affecting General Services.

27 I got the very strong sense that Mr. Lockwood would  
28



1 be responsive to those problems. I'm not even going to say  
2 whether he's sensitive, but I think I got the idea that he's  
3 a practical individual, and we need practical solutions to  
4 the issues that're affecting the business community, in  
5 particular the minority and women business community.

6 We can do a lot from an agency that buys over \$4  
7 billion in goods and services to assist those communities.

8 But I have to say that the problem was there before  
9 Mr. Lockwood got there, and I feel very confident that with  
10 the kind of support that I'm sure he will get from trade  
11 associations and a number of the people that I associate  
12 with, including my newspaper, that we're going to make some  
13 progress in that regard.

14 He had some very strong people on that advisory  
15 board: Howard Yee, who's been a strong advocate for minority  
16 business throughout the -- for the past 20 years; Gene Hale  
17 from Black Business Association, and several other people on  
18 there, that advisory committee, that I think can make some  
19 major contributions.

20 I say, and similar to Sylvia Siegel, who -- she and  
21 I have shared a number of issues, I know how to kick ass,  
22 too, and I'm not hesitant to do so.

23 And I just had some problems with the Procurement  
24 Department just getting information out of it a week or two  
25 ago, and I sent a FAX letter there that was in no uncertain  
26 terms spelling out what the problem was, and I got it  
27 resolved. And I think that that is what is needed in this  
28



1 situation, and I think that Mr. Lockwood needs an opportunity  
2 to do the job that is needed.

3 I thank you.

4 CHAIRMAN ROBERTI: Thank you very much.

5 Senator Petris.

6 SENATOR PETRIS: You mentioned the Black Business  
7 Association. Their headquarters is in Oakland. As you  
8 probably know, they're the biggest association of its kind in  
9 the state.

10 They sent us a letter strongly opposing the  
11 nomination based on failure to carry out the provisions of  
12 the law and undermining the current public policy that's  
13 actually part of our statutes.

14 This doesn't square with what you've told us so  
15 far. Have you talked to any of them, any of the members or  
16 the directors of that organization?

17 MR. JOHNSON: I'm a past President of the Black  
18 Business Association, and I organized the Black Business  
19 Association 20 years ago. So, the issues that -- and I  
20 talked to the young lady that's -- about half an hour ago  
21 before the meeting.

22 But let me just preface this by saying this morning  
23 I got a FAX letter from UMBE, highlighting and identifying  
24 some of the problems.

25 I have no disagreement with some of the problems,  
26 the problems that's being raised. I think they are problems  
27 there, and they do need to be attentioned.  
28





1           But I'm also very much aware that I have seen  
2 Mr. Lockwood in action, and I know the people that's on the  
3 advisory board. So, I'm not disputing any of the problems  
4 that are highlighted there.

5           SENATOR PETRIS: Well, the thing that concerns me,  
6 referring to that UMBE letter, for example, it says that  
7 historically, the Department's been among the worst state  
8 agencies -- so, that's not his fault. We're talking history  
9 -- in the category of minority and women enterprises'  
10 participation. Then it goes on to say:

11                "As interim Director, Mr. Lockwood  
12 failed to demonstrate an interest in  
13 changing this situation. In fact,  
14 General Service is at it again under  
15 Mr. Lockwood's leadership, this  
16 agency is attempting to institute  
17 emergency regulations, thereby  
18 bypassing the normal regulatory  
19 process and comment time, destroying  
20 good faith effort. And  
21 specifically, they're trying to  
22 amend Title 2 ..."

23 Chapter so-and-so, relating to this area.

24                "This change in regulations will  
25 destroy AB 1933 and make a mockery  
26 of all statewide procurement goals."

27 Do you have any comment on that?  
28



1 MR. JOHNSON: Yes.

2 First of all, I -- in regards to the problems.  
3 Again, let me restate that those problems had existed prior  
4 to his coming on board. Secondly -- I mean, you can't argue  
5 against that.

6 Secondly, in regards to any efforts to subvert  
7 AB 1933 through regulatory regulations, I have seen none of  
8 that at any time.

9 And thirdly, there is an advisory board. And I  
10 think that issue ought to have been and should be taken up  
11 with the advisory board that is there.

12 SENATOR PETRIS: This letter claims that he's  
13 dissolving that advisory board by trying to merge it with the  
14 Emerging Business Advisory Committee, and thereby diluting  
15 the influence and the strength of the minority and women's  
16 groups that are part of this advisory committee.

17 At the present time, apparently, there are two  
18 different committees.

19 MR. JOHNSON: There's a committee in place now  
20 which is an advisory board that was formed roughly nine  
21 months ago. And so far as I know, and talking to the  
22 members, they're still members of the advisory board.

23 SENATOR PETRIS: What's the name of that board?

24 MR. JOHNSON: Which one?

25 SENATOR PETRIS: The one that was formed nine  
26 months ago.

27 MR. JOHNSON: That's the Advisory Board to the  
28



1 General Service, which --

2 SENATOR PETRIS: Is that the Emerging Business  
3 Advisory Committee?

4 MR. JOHNSON: I think that is. Is that what it's  
5 called?

6 MR. LOCKWOOD: Yes.

7 SENATOR PETRIS: They're claiming that that one  
8 kind of wipes out the Minority Women's Advisory Committee by  
9 merging the two.

10 In the past, at least you've had a separate voice  
11 of this group, which is now, according to this letter, being  
12 lost.

13 MR. JOHNSON: Mr. Petris, there is two different  
14 schools of thought that has developed here. There's people  
15 who refer to emerging businesses "emerging ethnic business".  
16 There're people who are saying that the usage of the words  
17 "emerging business" tends to be a lot more specific and  
18 getting away from the idea of minorities, because minorities  
19 tend to be very limited.

20 So, I know that there is that -- that position  
21 afoot, to say let's call minorities and women "emerging  
22 businesses", to identify them more accurately rather than  
23 minority businesses, because in the State of California,  
24 there is a number of businesses that are Asian, Black,  
25 Latinos, that are growing in this state. The question of  
26 designation as minorities becomes very limited. So, I know  
27 that those ideas are afoot and are being discussed.  
28





Now, as to the question of subverting or changing the statute, there's several laws -- there's several pieces of legislation that are saying let's change some things in relationship to AB 1933, one of which is that some of it is so restrictive that it's requiring even the minorities to begin to have to have to advertise extensively in order to get a contract. And I live by advertisement, and I think that is a bit too strict. I think you have to give some -- have some room so that if a person is advertising -- is bidding on a \$25,000 contract, or \$50,000 contract, and they have to go out and pay money to advertise for minority business, that -- there has to be some ground given here so that that is not the case.

So, if that is a piece of legislation that is being talked about, then I think that needs to be a change, needs to be looked at.

SENATOR PETRIS: It doesn't specify. I don't see anything in here about advertising.

MR. JOHNSON: No, that's a part of what has been discussed both by the advisory council for the Department of Corrections, by the advising council for the Department of Transportation, and that's been the issue that's been discussed by the advisory council for General Service.

SENATOR PETRIS: Here's another letter from the National Association of Minority Contractors, the Northern California Chapter. It says in part:

"In fact, General Services under



1 Mr. Lockwood's leadership has failed  
2 to improve its poor utilization of  
3 MWBEs. Furthermore, Mr. Lockwood  
4 has not exhibited an interest to  
5 change this situation. We are  
6 concerned with this effort to  
7 destroy AB 1933 and of his failure  
8 to seek input from the advisory  
9 committee on policies with minority  
10 and business women's implications."

11 That's kind of strong language.

12 MR. JOHNSON: Sure.

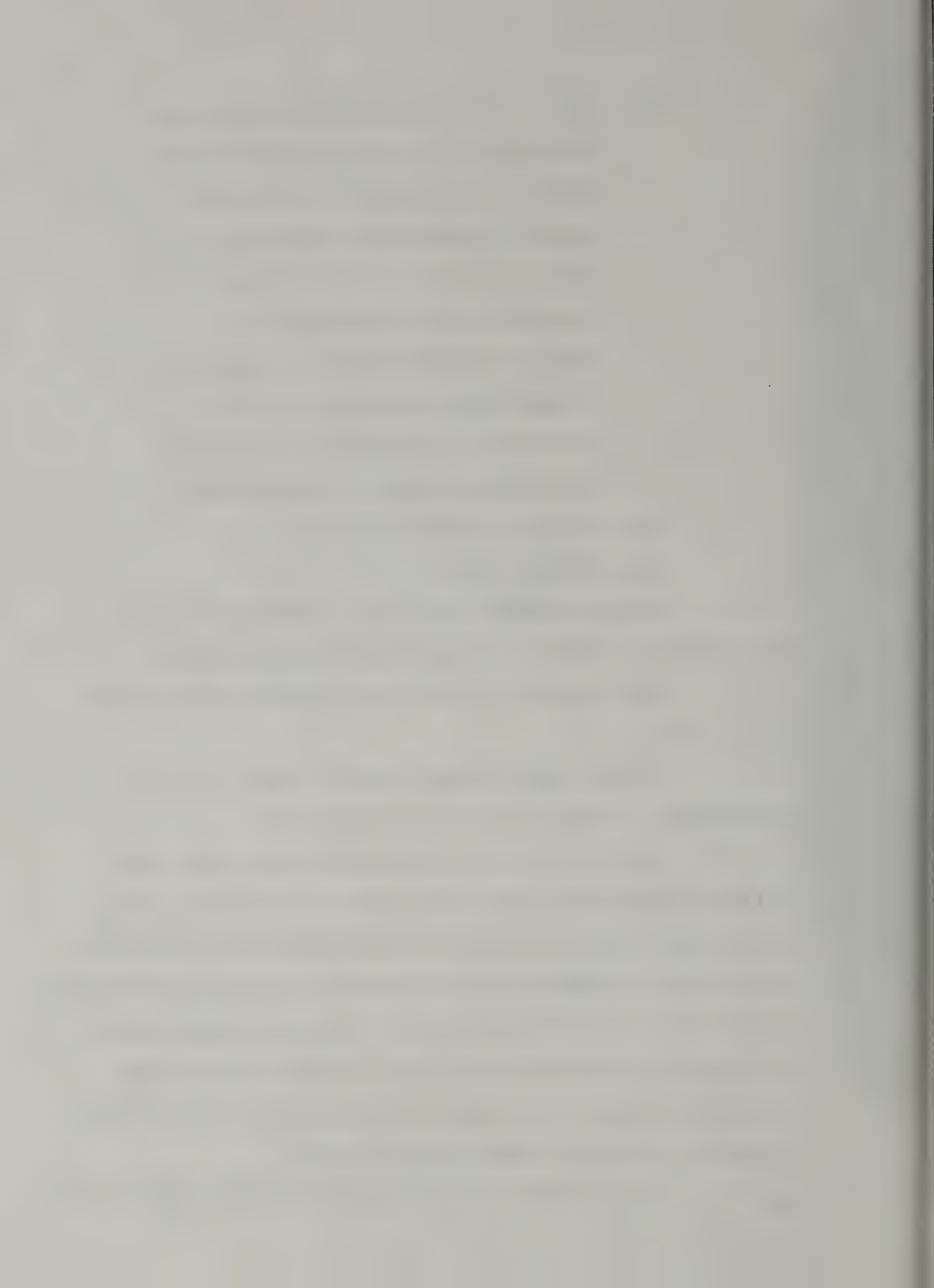
13 SENATOR PETRIS: And you're saying they ought to  
14 get together. They're saying he won't get together.

15 MR. JOHNSON: I don't think that's true in the  
16 first place.

17 In the second place, I don't agree with their  
18 assessment. I don't think that is the case.

19 I think the case is that there are some very  
20 difficult problems, and I think that the advisory board  
21 that's been operating under the leadership there, both Mr.  
22 Babich and the chairman of the advisory board, have attempted  
23 to resolve some of those problems. The fact that they're not  
24 resolved at this point means that you have a very long-  
25 standing problem that needs some attention. And it needs  
26 attention within the bureaucracy itself.

27 I think that is the direction that we ought to be  
28



1 expending our efforts, to get that bureaucracy to respond to  
2 the problems.

3 My sense of the situation is that Mr. Lockwood will  
4 be a friend in that regard. And, you know, what else can be  
5 said? I mean, you can get rid of Mr. Lockwood and have the  
6 same problem, or you can take the nine months that you have  
7 there, and you had some movement forward, and say, "Let's  
8 come up with specific and targeted dates to alleviate some of  
9 these problems."

10 That's what I'm more interested in. I'm not  
11 interested in anybody's hide. I'm interested in solving the  
12 problem. I'm not interested in being on the board of the  
13 advisory, or anything, that situation. There's a problem  
14 there that needs to be solved, and I think that you have a  
15 person in place that has exhibited some -- some leadership in  
16 that regard.

17 And I disagree that it has been negative.

18 SENATOR PETRIS: What are the positive things that  
19 have been done that you think are helpful?

20 MR. JOHNSON: Well, I think the first positive  
21 thing that has been done is that there has been a discussion  
22 of the issues of procurements. I think that there have been  
23 some contracts, and unfortunately, that have been let to --  
24 substantial contracts that have been let to some minorities  
25 in the last nine months. I think there's been more bidding  
26 taking place within this last mine months.

27 I think there have been a lot more advocacy taking  
28





1 place within the movement. And I'm in the newspaper  
2 business, and I see that. My office is right across the  
3 street -- one of my offices is right across the street from  
4 Procurement. And I have people going to those bid meetings.  
5 Everyday they attend a bid meeting. So, I see the  
6 participation.

7 I'm not coming here based on that. I didn't see a  
8 lack of participation, and I can send you that information.

9 SENATOR PETRIS: I'd be happy to get it.

10 Let me share some other information with you.

11 August, 1991, Auditor General's Report suggests  
12 that the Department of General Services and majority of state  
13 agencies surveyed are slow in implementing AB 1933.

14 MR. JOHNSON: Right, no problem.

15 SENATOR PETRIS: He was the chief in August, 1991.  
16 I don't know how far back the report goes. I haven't seen  
17 the report.

18 Secondly, the annual procurement participation  
19 reports prepared by that Office of Small and Minority  
20 Business, part of the General Services, contain inaccurate  
21 information. The agency adopted controversial  
22 self-certification methods of qualifying firms, and self-  
23 certification was strenuously opposed by all MWBE  
24 associations.

25 So, we have repeated reports by people who are in  
26 the minority category in business. Now we have an official  
27 state agency review that seems to confirm some of the  
28



1 criticism that they've made, and they're not talking past  
2 history now; they're talking recent history.

3 It doesn't seem to square with what you're telling  
4 us.

5 MR. JOHNSON: Senator Petris, I just recently did a  
6 review of the report from the Auditor General's Office in  
7 which they outline all of those issues as far as General  
8 Service is concerned. And I agree with that. I think that  
9 there are some severe problems there. And I think that there  
10 need to be some immediate solutions to those problems and a  
11 program put in place.

12 And, you know, I'm the type of person that  
13 recommends. I can criticize a situation, but I also have  
14 recommendations to solve their problems.

15 I know there are a few things that need to be done  
16 in this situation. And I'm saying that in regards to the  
17 Committee and the confirmation, that we ought to say to  
18 Mr. Lockwood that here are some severe problems here.

19 To the critics of Mr. Lockwood, who many I've  
20 worked with over the years, to sit down with him and say,  
21 "Let's find some solutions to this situation."

22 That's the way it is. We've got AB 1933, which  
23 established goals. So the question is, how to implement  
24 those goals, and how to implement that -- those. And if the  
25 advisory board that is sitting with the office of  
26 Mr. Lockwood is not responsive, or not sufficient, then  
27 broaden it and utilize some of the critics on to that.  
28



1 I've also talked to the -- oh, on a couple  
2 occasions, to Mrs. Guitan and Mr. Johnson regarding this  
3 situation, and there are problems; no question about it. But  
4 the question is, what are we going to do to solve those  
5 problems?

6 And I say, I don't think coming up with a new  
7 Director at this juncture is going to solve the problem. I  
8 think what's going to solve the problem is some very clear  
9 directives that have some real immediate solutions.

10 SENATOR PETRIS: Where's the directive going to  
11 come from?

12 MR. JOHNSON: It's going to come from the  
13 Director's office along with the rest of his associates  
14 there, including the Deputy, Mr. Babich, and the Office of  
15 Small and Minority Business. They need to come up -- the  
16 Office of Small and Minority Business need to come up with  
17 some more accurate figures. They need to come up with a  
18 better data base. They need to come up with -- the issue of  
19 self-certification is an issue that has been discussed long  
20 before Mr. Lockwood came aboard.

21 And there're divisions on the question of  
22 certification, because I have some strong objections to the  
23 way certification is handled by the Department of  
24 Transportation, which I find very limited. And it is the  
25 kind -- and I find it very odious, arduous, in regards to  
26 small businesses, because they have to go through all these  
27 hoops in order to do that.  
28





1           And I'm very much aware of the fact that we're  
2 concerned with fronts, as we should be. But there are a lot  
3 of hardships on some of these certification programs, and  
4 there's a lot of hardship when you have to go through 10-20  
5 different certifications to be accepted. And that's the kind  
6 of hoops that alot of small businesses fight regulations all  
7 the time.

8           So, it is equally important as far as minority  
9 business is concerned that these heavy regulations not be a  
10 part of the action.

11           I know, for example, that there are -- the  
12 "old-boy" network is in place, both within the minority  
13 business community and the non-minority business community.  
14 It's those people who can go through those hoops.

15           And I know as a newspaper that deal with business  
16 opportunities, I get calls constantly about -- from small  
17 minority businesses, saying, "Hey, this is just -- this is a  
18 hardship. I can't put all this paper together. I can't go  
19 through all this to do some business."

20           So, the question of self-certification is not  
21 ordained, and I have some severe reservations about the  
22 methodology used in that situation. And it may benefit a few  
23 people, but it don't benefit a heck of a lot of businesses  
24 out there -- small, Black, Asian, Hispanic businesses -- and  
25 it needs to be looked at.

26           SENATOR PETRIS: Are you a member of the advisory  
27 group?  
28



1 MR. JOHNSON: No. No, I was a member of the  
2 Caltrans -- an original member of the Caltrans advisory  
3 group, and I'm also a member of the advisory group to the  
4 Department of Corrections.

5 I have a business to run. I can't be a part of all  
6 of these advisory groups.

7 SENATOR PETRIS: Two's enough, I guess?

8 MR. JOHNSON: Yeah, right. It's one now.

9 SENATOR PETRIS: Thank you.

10 SENATOR MELLO: Mr. Chairman, question before he  
11 leaves.

12 CHAIRMAN ROBERTI: Senator Mello.

13 SENATOR MELLO: Mr. Johnson, in response to Senator  
14 Petris, you talked about clear direction, and you thought the  
15 Legislature should give it -- I mean, the Director should  
16 give it.

17 I want to call your attention to Section 61 of the  
18 Codes dealing with this provision of minority/women business  
19 participation goals for professional bond services:

20 "Notwithstanding any other provision  
21 of law, each awarding department  
22 shall have annual statewide  
23 participation goals of not less than  
24 15 percent for minority business  
25 enterprise and 5 percent for women  
26 business enterprise for contracts  
27 entered into by the awarding  
28



1 department during the year for each  
2 of the professional bond services."

3 And it goes on and on.

4 The point is, I think we in the Legislature have  
5 expressed our intent that that's the law to be carried out.

6 What I want to call to your attention, this chart  
7 came out of the Department of General Services, the  
8 Department Mr. Lockwood is the Director of.

9 In reality, as far as women getting the share of  
10 the contracts, the goal was set at 5 percent. In reality,  
11 they got .01. That's not one percent; that's one-hundredth  
12 of one percent where the goal should be 5 percent.

13 Now, that's a long, far distance away from what's  
14 happening and the realities set forth by the Legislature.

15 As far as minority businesses, the goal is 15  
16 percent. They actually come out with 7.98.

17 So, to respond to your point, and you feel free to  
18 try to respond, I think we have given that Department a clear  
19 statement about where the minority and women goals should be  
20 for getting millions and millions of dollars of state funds  
21 in contracts, and yet the report, as of December 31st, 1991,  
22 that's about a month-and-a-half ago, that's the term in which  
23 Mr. Lockwood has been serving for about nine or ten months,  
24 the implementation of that law is down, as they said, .01 and  
25 about half for the minorities.

26 And I think if he was to get graded in school for  
27 these kind of -- for grades, it would be definitely an F, a  
28





1 failure, in my perception.

2 MR. JOHNSON: My perception, too, would be a  
3 failure. We're not -- I'm not disputing that situation.

4 But let me just, if I might, Maxine Waters, when  
5 she was putting AB 1933 together, she called me to give out  
6 some demographics on the minority business in the State of  
7 California, as to whether the law was -- was there a  
8 justification for the law. And we keep demographic figures  
9 in a huge data base that we maintain. And I gave her the  
10 figures in terms of the gross -- the total amount of firms in  
11 the State of California at that point, of some 250,000, \$12  
12 billion for minority -- 12-and-a-half billion for minority  
13 business, and some 600,000 women firms in the State of  
14 California, of which 12.5 billion for that gross receipts in  
15 the State of California.

16 So, I understood at that time that -- and this had  
17 been over the last 20 years, that the percentage of minority  
18 business and women businesses was very low. It was -- and 20  
19 years ago, when we started this business, it was less than  
20 one-seventh of one percent. This was nationwide. And so, we  
21 are talking today in the neighborhood of 3 percent and 2  
22 percent, so obviously, there hasn't been much movement in  
23 this regard.

24 That is not to say that there have not been -- that  
25 there haven't been firms growing, minority business firms  
26 growing in the State of California. But I think you need to  
27 have a good tracking system involved in -- if you want to  
28



1 find out what's happening in the bid procedure. There's a  
2 bid procedure. You're either going to do two things -- three  
3 things you're going to have to do to change this situation.

4 You're either going to set -- develop set-asides.  
5 You're either going to develop some preference for minority  
6 and women businesses. Or, you're going to set up a tracking  
7 system in there to say let's see who's bidding, how often  
8 they bid, and when they bid, and what is the result of their  
9 bid.

10 And your problem is that nobody has the tracking  
11 system to determine that. And so, almost everything that we  
12 talk about, we're not able to quantify. And if we're not  
13 able to quantify, we're not able to make steps ahead to  
14 rectify it.

15 The interesting thing about the figures here in  
16 that report on the -- that I read from the -- what is it, the  
17 Attorney General. I have to get the report. It indicates  
18 that there have been a lot of minority business taking place  
19 and nobody knew it, okay? Because we haven't been capturing  
20 the information.

21 You need to capture the information. You need to  
22 quantify that situation. So one of the things that ought to  
23 take place within the General Service and the Procurement  
24 Department is that, who's bidding? What minority's bidding?  
25 What are the success ratios? Why aren't they getting any of  
26 those contracts? And what are the reasons for them not  
27 getting the contracts?  
28



1           We can't continue to just go on. Just like the  
2 bonding issue, we always talking about how difficult it is  
3 for bonding, but we never do anything about it.

4           So, I'm saying let's do something about it. This  
5 is an opportunity here. Clearly there's a law on the books  
6 that ought to be lived up to, but we have an opportunity here  
7 to set in place, and to say to the Director, Let's put in  
8 place some specific things to find out why this is taking  
9 place. And then, what is the reason. Who's the  
10 obstructionist? Where the obstacles are. That's what we  
11 need to find out.

12           I suggest that we maintain the status quo with  
13 Mr. Lockwood there, and that this kind of process take place  
14 so that if it ever comes again, you got some information that  
15 can make your life a lot easier as well as everybody else a  
16 lot easier.

17           SENATOR MELLO: Thank you, Mr. Chairman.

18           CHAIRMAN ROBERTI: Thank you very much, Mr.  
19 Johnson.

20           Is there anyone else who wishes to testify, please  
21 come forward.

22           I think we need a break, so we're going to break  
23 for five minutes.

24           [Thereupon a brief recess was taken.]

25           CHAIRMAN ROBERTI: The Committee will come to  
26 order.

27           We were on witnesses. Please state your name.  
28





1 MR. GUERRERO: My name is Paul Guerrero. I'm the  
2 Executive Director for United Minority Business  
3 Entrepreneurs. We're a statewide organization composed of  
4 women and minority businesses.

5 I'm speaking on behalf of UMBE, and I'm also  
6 speaking on behalf of a newly created statewide alliance of  
7 Hispanic and Indian Trade Associations.

8 The members of the Alliance include the Latin  
9 Business Association of Los Angeles; the National -- I mean  
10 the Northern California Latin Business Association; Society  
11 of Hispanic Professional Engineers, National; Society of  
12 Hispanic Professional Engineers, Los Angeles; California  
13 Hispanic Professional Association, CHISPAS; the Hispanic  
14 Contractors Association of Los Angeles; the National Concilio  
15 of America; UMBE; and the National Indian Development  
16 Association of Sacramento.

17 We have three issues. First is the advisory  
18 council that's been talked about.

19 The second is the need to implement AB 1933.

20 And the third is the creation of a bona fide  
21 certification process.

22 I will say that we met with Mr. Lockwood, and we  
23 have discussed the issues. Right now, we are prepared to  
24 recommend a qualified support. I would like to go over the  
25 content of our discussion, and then ask the Committee to  
26 possibly re-evaluate the performance of the agreed upon --  
27 somewhere between now and the 10th of next month.  
28



1           The issue was the creation of an advisory council.  
2           The advisory council that you've heard discussed is composed  
3           of individuals who are presently doing business with General  
4           Services. And we recommended that an advisory council  
5           composed of business associations, minority and women  
6           business associations, that have a constituency to respond  
7           to, be appointed.

8           And Mr. Lockwood agreed to this. And he agreed to  
9           get an advisory council, not necessarily totally in place,  
10          but in progress, in momentum, prior to the 10th of next  
11          month.

12          He also agreed to the following organizations being  
13          on the advisory council. He has checked them out, and he  
14          believes they would be appropriate, and that is: UMBE, who  
15          represents women and minorities; National Indian Development  
16          Association to represent Indians; Latin Business Association;  
17          SHIP, CHISPAS, and the National Concilio of America.

18          And again, he agreed to establish this committee  
19          before March 10th.

20          He also agreed to take letters from Black  
21          associations, women associations, and Asian associations to  
22          complement and fill out the complement of the advisory  
23          council. And he agreed to chair the advisory council  
24          himself.

25          With regard to AB 1933, there are presently  
26          hearings being held that would redefine good faith effort.  
27          One of the terms that would be redefined would be  
28



1 "consideration". And under the proposed rule, the word  
2 "consideration" would become, if the prime contractor did the  
3 same as he did for any other contractor with the minority  
4 contract, that would be sufficient consideration, be a good  
5 faith effort. Which would mean, if he did nothing for either  
6 side, he did not outreach at all for minorities, he would be  
7 considered having done a good faith effort.

8 Most contractors already have people that they're  
9 doing business with, so they don't have to do outreach. The  
10 outreach is primarily to bring new blood into the system.

11 So, he agreed to pull back that interpretation of  
12 "consideration" and to start implementing AB 1933, and any  
13 further changes to run by his newly advisory council so he  
14 would get input from the minority business community, and  
15 those organizations, again, that have a constituency that  
16 they just respond to.

17 And three, with regard to certification, he agreed  
18 to implement a bona fide Caltrans-type certification into  
19 General Services, and the present list that General Services  
20 has, which is composed primarily of self-certified  
21 individuals, that that list would not be commingled with the  
22 Caltrans data base that Assemblyman Polanco was attempting to  
23 create, but would eventually be phased out and those people  
24 would have to be subjected to a bona fide certification or  
25 become uncertified.

26 So, based on these agreements on those three areas,  
27 those are the three issues that we had, we would recommend a  
28





1 qualified support, and we would ask that this Committee  
2 revisit this, the issue of recommendation to the full Senate,  
3 sometime before the 10th.

4 CHAIRMAN ROBERTI: Thank you very much.

5 Are there any other witnesses? Please come  
6 forward.

7 MS. LUIS-CARNES: Good afternoon, Senators. My  
8 name is Aurea Luis-Carnes. I am the Executive Director of  
9 the Northern California Black Business Association, which  
10 Senator Petris had alluded to in the letter of opposition to  
11 Mr. Lockwood.

12 Having spoken to Mr. Lockwood, I feel that we have  
13 worked out an agreement to where he will adhere to some of  
14 the previews of your last speaker, and I'm willing to work  
15 with him on an advisory board to let him and his staff know  
16 some of the ramifications of what AB 1933 has been. In the  
17 community, it has been advertised as a means of procuring  
18 state contracts, but in essence, we have found in our  
19 organization that people, when they are trying -- when  
20 businesses try to procure, there are so many road gaps and  
21 road stops that we have to iron them out before we bring the  
22 bill out in full force.

23 So, it has been enacted, and his group, his EBE  
24 advisory panel, which is Emerging Business Enterprise, in my  
25 canvassing of the group here, they're in somewhat under  
26 different concept of what EBE means. And my group is kind of  
27 afraid of that catch-all EBE term. We fought very long and  
28



1 hard for M/WBE designation. Those designations do mean -- do  
2 really mean money for minority communities.

3 I might want to say that anything DGS does is  
4 reflective of the whole State of California. If DGS and any  
5 of the other three entities in the state do not adhere to AB  
6 1933, the private sector is looking at this. And it's very  
7 dismal out in the private sector right now for M/WBE right  
8 now.

9 So, we're looking to the state to have some sort of  
10 -- how can I say it -- some sort of mentor so that private  
11 industry can start pumping money into the MWBE community with  
12 a front runner like a big corporation -- I will call it a  
13 corporation -- as DGS. So, we're looking to him and his  
14 leadership.

15 After speaking with him, I do feel that he has the  
16 capability to get his, if you will, board staff to really  
17 take a look at some of the hard issues that are out there  
18 surrounding the AB 1933.

19 I sit on the Caltrans Advisory Board, and I'm  
20 crying for my organization. And I also sit on the  
21 Subcommittee for Bonding AB 1933 and One-stop Certification.  
22 So, I am very active. Try to glean all the information  
23 through reading and attending hearings such as this.

24 I have my President at this moment sitting in the  
25 bonding hearing for Assemblyman Polanco's office so we can  
26 get all there is to know about how to get procurement in the  
27 right vein. We need the money in the MWBE community, so we  
28



1 are at this point waiting until he forms his corporation --  
2 forms, I'm sorry, forms his advisory panel with the Northern  
3 California Black Business Association. And if he would  
4 extend it to the Southern California Black Business  
5 Association, that would be nice also.

6 But I'm willing to sit on that panel. As a Black  
7 business woman, I have an office in computer products  
8 company, so commodities is my bailiwick.

9 So, at this point, I'm just waiting for the 10th of  
10 March, to see if I get my call to sit on the advisory board  
11 and lend some of my expertise that I do with Caltrans.

12 Thank you.

13 CHAIRMAN ROBERTI: Senator Mello.

14 SENATOR MELLO: A thought comes to mind. I guess  
15 minority business groups certainly got the attention of  
16 Mr. Lockwood and he cut a deal, which appears to make -- at  
17 least give him qualified support.

18 The dates that were set, I don't know what the Pro  
19 Tem plans on bringing his appointment up in the Senate. His  
20 date is March 11th. That's the date his present term would  
21 expire, so either Thursday the 5th of March or the 9th of  
22 March would be the last two sessions before the 11th.

23 Now, if you said March the 10th, that would be  
24 after our session. It would be nice, and I don't whether --  
25 my question would be, Mr. Lockwood, if he agreed to all these  
26 conditions, and again, I think it's important that we get  
27 this in writing so that we can also enter this in the  
28





1 Journal so that it confirm at least what this agreement is  
2 from both of your perspectives. And then, have that to the  
3 Legislature, and we take your nomination up on the Floor  
4 right after that point.

5 I guess the first thing, Mr. Chairman, when would  
6 you plan to bring his date up?

7 CHAIRMAN ROBERTI: I was planning two weeks from  
8 Thursday, which would be the 29th.

9 SENATOR MELLO: How long would it take you to come  
10 up with --

11 MR. LOCKWOOD: I think I can solve the problem very  
12 easily for you.

13 The request is of various organizations to be  
14 appointed to an advisory board which would be advisory to the  
15 General Services Department which I would chair.

16 I'm certainly agreeable to that. I have no problem  
17 with that, and that's something that will be done in a week.

18 So, I mean, if you need something in writing,  
19 that's fine, but --

20 SENATOR MELLO: We asked Mr. Coyle, I think, the  
21 same thing that would apply here, as far as I'm concerned,  
22 and that is just a letter on file. It has no force of law,  
23 but it's sort of a statement of intent put forth there that  
24 is there for further review at some later point, I mean, as  
25 far as looking at it.

26 Let me ask you this. Do you agree with all the  
27 three points that they were making?  
28



1 MR. LOCKWOOD: I need to comment on -- yes, but I  
2 need to comment on a couple of them just so -- I don't want  
3 to mislead anybody.

4 On this last point, I don't have any problem with  
5 appointing an advisory group to General Services which  
6 includes the organizations that have been mentioned.

7 I also was contacted by a women's construction  
8 organization, and they wanted representation, and I've  
9 offered that to them, too. That was a separate meeting,  
10 different group of people.

11 So, and that will happen. That will happen  
12 shortly.

13 Number two was the full certification versus self-  
14 certification. For your record, I've always been an advocate  
15 of full certification. I had it in San Diego. I don't like  
16 self-certification. That request for full certification has  
17 gone forward. It's been approved by the Agency Secretary,  
18 who agrees with that. It hasn't been approved at this point.

19 So, Mr. Guerrero, if you're still here, I'm  
20 supportive of it. I see no reason why I wouldn't be, but  
21 that does require a review at a higher level.

22 And the third one is the question of the changes in  
23 the legislation and the word "considerance". Senator Petris  
24 raised that. And at some point, I'd like to respond to that.

25 Do you want me to do that now?

26 SENATOR MELLO: It's up to the Chairman.

27 I'm trying to formalize this discussion so it comes  
28



1 on the Senate Journal and it is formalized in a way that we  
2 have discussed here today.

3 MR. LOCKWOOD: Okay.

4 I want to make sure the intent on that, everybody  
5 understands what that intent was.

6 The Legislature adopted legislation last fall which  
7 was urgency legislation. It changed the disabled veteran  
8 requirements.

9 Prior to that change in legislation, in order to be  
10 certified as a disabled veteran, you had to be -- 100 percent  
11 of the business had to be owned by the disabled veteran, and  
12 100 percent of it had to be managed by the disabled veteran.

13 The change in the legislation, which we supported,  
14 and a number of disabled veterans couldn't comply with the  
15 100 percent. They may own 60 or 70 percent, or may be  
16 managing the firm, but unless they had 100 percent, they were  
17 out. So, the change in the legislation reduced that  
18 requirement to 51 percent.

19 The second it did, it used to be a zero threshold,  
20 and the \$10,000 threshold was put in place by that  
21 legislation. The moment that urgency statute was adopted, it  
22 was inconsistent with our regulations, because the  
23 regulations on the prior legislation talked of 100 percent.  
24 So we immediately started through emergency regulations so we  
25 would be in conformance with the legislation.

26 We have tried to accomplish two things. There were  
27 bidders who were not treating people equally. They would  
28





1 call subs that they may have used for years a month in  
2 advance, as an example. Then they would call women and  
3 minority businesses a day or two ahead of time and say, "By  
4 the way, do you want to bid on this?" And they couldn't bid.

5 We got a lot of complaints from the minority and  
6 women business community that they were cut out on that.

7 There was also a bonding requirement, where a prime  
8 could say to a sub, "I'll cover you under my bond as the  
9 prime, but a woman or minority enterprise, you're going to  
10 have to get your own bond."

11 So, this "consider" definition placed in the  
12 legislation was to make it an even playing field. And if you  
13 are going to cover your regular subs under your bond, you're  
14 going to also have to cover minority and women businesses.

15 And also, if you're going to call a month in  
16 advance to ask for bids, you're going to have to call the  
17 minority and women.

18 So, it was our attempt, due to minority and women  
19 businesses, to make that an even playing field. The  
20 perception is just the opposite, that we're trying to  
21 undermine 1933. That wasn't the intent at all.

22 We need to get together with Mr. Guerrero and his  
23 group and advisors, walk through that, and then decide, you  
24 know, what do we do at this point. Do we drop that out? And  
25 we need to do that and can do that fairly shortly.

26 So, those were the three points, and I don't have a  
27 problem with them.  
28



1           SENATOR MELLO: Well, I think, I'm just speaking  
2 for myself, I think I would -- they're concerned. They came  
3 here with strong letters of opposition.

4           MR. LOCKWOOD: I know they did.

5           SENATOR MELLO: They switched from that, I  
6 understand, to qualified support, which means they'd be  
7 supportive if this agreement you put together is somewhat  
8 formalized.

9           I'm just saying, can we get it formalized by  
10 letters from you so stipulating and so we can print that in  
11 the Senate Journal. I think that would complete the  
12 discussion here today.

13          MR. LOCKWOOD: The answer to that question,  
14 Senator, is yes, we can.

15          SENATOR MELLO: You can do that.

16          Let me ask the Chairman, can you do all that before  
17 the 29th meeting, February 29th?

18          MR. LOCKWOOD: I can have a letter to you in days,  
19 by the end of the week.

20          CHAIRMAN ROBERTI: That would be fine.

21          SENATOR MELLO: Bear in mind, the date you'll be  
22 brought up on the Floor is the 29th.

23          CHAIRMAN ROBERTI: The 27th is a Thursday.

24          SENATOR MELLO: You're right, the 27th. So that  
25 means, if we can have it by the 24th, we could put it in the  
26 file on January 24th.

27          MR. LOCKWOOD: Yes.  
28



1           SENATOR MELLO: Thank you, Mr. Chairman.

2           CHAIRMAN ROBERTI: Thank you very much.

3           Senator Petris.

4           SENATOR PETRIS: I have a couple of questions on  
5 another subject area, it's another bill, AB 47.

6           The author has asked me to inquire. That's  
7 Assembly Member Eastin.

8           She's very active in the education field, and she's  
9 Chair of the committee there. She was; I think she still is.

10          The bill was carried to streamline the design and  
11 construction process for public buildings, hospitals and  
12 schools in particular, by eliminating some layers of  
13 bureaucracy. And to accomplish that, it required that the  
14 State Architect report directly to you, I guess, to the  
15 Director. And the organizational chart that was made  
16 following adoption of that statute shows that kind of chart  
17 flow, but as a matter of actual practice, the Architect is  
18 buried about three layers down and is reporting to somebody  
19 else, the Deputy Director of the Real Estate Building  
20 Division.

21          She's asked me to have you comment on that. She  
22 feels that that subverts the purpose of the bill and doesn't  
23 bring it into this direct line with direct access to you.

24          Can you comment on that?

25          MR. LOCKWOOD: Yes, I can.

26          SENATOR PETRIS: She says it's three layers down.

27          MR. LOCKWOOD: I'll be happy to.  
28





1           That's not correct, Senator. That was the case  
2 prior to January 1 of 1992, because that was not urgency  
3 legislation. The effective date was January 1 of 1992.

4           The State Architect happens to be a San Diegan. I  
5 didn't bring him up; he made it on his own. We live a few  
6 blocks apart.

7           He has direct access, and if anybody doubts that,  
8 they can ask Mr. Hallenbeck, the State Architect, and he'll  
9 be before you for confirmation here shortly, and you can ask  
10 him the same question.

11           That's true of any deputy in the Department. But  
12 Mr. Hallenbeck reports directly to me.

13           Now, on a day-to-day basis, he may deal with  
14 Personnel on a personnel matter, or Budget on a budget  
15 matter, or the deputy for Real Estate on a real estate  
16 matter.

17           But in terms of performance reports, and leaves,  
18 and benefits, and access, he reports directly to me, not even  
19 through the Chief Deputy.

20           SENATOR PETRIS: Is that in the neighborhood or in  
21 your office?

22           MR. LOCKWOOD: Well, as a matter of fact, when he  
23 moved up, we lived three blocks apart in San Diego, where we  
24 both have homes, and we live two blocks apart coincidentally  
25 in Sacramento where we both have homes. And we've been in  
26 each other's homes.

27           I just don't understand that.  
28



1           SENATOR PETRIS: How about explaining for my  
2 benefit the two functions? The Architect has certain  
3 functions, and this other Office of Planning Real Estate,  
4 they seem to overlap.

5           MR. LOCKWOOD: There are three offices. One is the  
6 Office of Real Estate. And the Office of Real Estate is  
7 involved in negotiating the purchase of property and  
8 exercising leases, and those kinds of things.

9           I think what she's referring to, and I've discussed  
10 this with Member Eastin, is there is an Office of Project  
11 Management and Development, and there's an Office of the  
12 State Architect. The Office of the State Architect is  
13 involved in all the plan check, for example, that comes out  
14 of schools, the seismic safety. There's an A&E section  
15 within the Office of the State Architect.

16           The Office of Project Management and Development is  
17 the office within General Services that actually ramrods  
18 projects. Right now, well, the Reagan Building in Los  
19 Angeles; the Del Mar Race Track; the major facilities are  
20 Office of Project Management and Development.

21           SENATOR PETRIS: The Del Mar Race Track? Does that  
22 belong to the state?

23           MR. LOCKWOOD: Yes, the 22nd Agricultural District,  
24 and General Services Department is the contractor when it  
25 comes to that improvement at Del Mar.

26           SENATOR PETRIS: That's part of an agricultural  
27 district?  
28



1           SENATOR CRAVEN: It's an agricultural district that  
2 operates as a race track.

3           MR. LOCKWOOD: It's the most profitable  
4 agricultural district.

5           SENATOR PETRIS: Yes, I would think so. Pretty  
6 good cash register there for the state?

7           SENATOR CRAVEN: It's the grandstand enlargement.  
8 The grandstand was built in '35, so they felt it served its  
9 purpose.

10          MR. LOCKWOOD: It was \$58 million, and not at state  
11 expense.

12          SENATOR PETRIS: Not bad.

13          MR. LOCKWOOD: Not bad.

14          But the point is that the Project Management and  
15 Development Division is the one that ramrods those major  
16 projects. They're both within General Services Department,  
17 and obviously, Real Estate, Project Management and  
18 Development, and the State Architect talk with one another.

19          The Office of Project Management and Development  
20 and Architecture were within a section within General  
21 Services until the mid-80s, when the Legislature, due to some  
22 dissatisfaction, split the two apart.

23          I talked to Mr. Hallenbeck about at some point  
24 recombining those. Member Eastin would like to do that  
25 immediately. I have a different view on that, so we do  
26 disagree on that, but over time, that might make sense. And  
27 if it was state perfect, and we started from scratch, we  
28





1 might do that. At the present time, I don't think it's in  
2 the state's best interests to combine those two.

3 SENATOR PETRIS: Apparently things have changed  
4 considerably since these letters we were looking at that have  
5 been written. I hear of two separate groups having agreement  
6 with you to go on an advisory committee.

7 Bearing in mind the questions I asked the witness,  
8 would you care to comment on any of the points that were  
9 raised there?

10 MR. LOCKWOOD: There was just some  
11 misunderstanding, and I think those have been cleared up.  
12 There were five points that were made.

13 We've talked about the regulations. I want to get  
14 on consideration and what was behind our intent to change  
15 that regulation.

16 In terms of the record of the General Services  
17 Department, while we're not where we want to be, and Senator  
18 Mello read from the prior report where, I believe, your  
19 percentage was .2 or two-tenths of one percent -- the Auditor  
20 General's Report.

21 In the last six months on women, for example, we  
22 are at 3.86. Again, the statute goal there is 5. There's no  
23 doubt in my mind that that's achievable, and we will do it.

24 And just as evidence, I called down, because I knew  
25 this question was going to come up, and when I went to the  
26 City Manager's Office in San Diego, we didn't have such a  
27 program. And my last year there, the percentage of minority  
28



1 in total construction for the city was 26.8 percent. The  
2 percentage of women was 15.4 percent. And that was for the  
3 '91 fiscal year, which was my last year as Manager.

4 So, I know it's do-able. We will do it, and we're  
5 up about ten-fold the last six months of last year over the  
6 prior year. So, I don't think it's going to take much time  
7 to do that.

8 We talked about self-certification and full  
9 certification, and I indicated that I, like the letters  
10 indicated, I'm an advocate of full certification.

11 Advisory groups, the confusion there is that in  
12 1933, we wanted bring together a group vendors who do  
13 business with the State of California and have for a period  
14 of time, and it was a mixed group, both gender and ethnic,  
15 intentionally mixed. For them to tell us what the problems  
16 were in dealing with our Department. And over six months  
17 from July through December, we went through a series of  
18 meetings where they did that, and we worked through a series  
19 of recommended changes in 1933 which have gone forward to  
20 Legislators who are interested in this, and there will be  
21 legislation forthcoming that will clarify that.

22 That's separate and apart. That was kind of a  
23 target group on a particular group.

24 We're going to bring some members of that back to  
25 work on professional services. This is commodities  
26 primarily. Professional services, which is a consultant area  
27 which we haven't vented yet, we're going to have them working  
28



1 on that. That is separate and apart from the desire of  
2 business organizations. These were individuals.

3 The desire here, which I've indicated I'm willing  
4 to do, is have the various organizations in the state, women  
5 and minority business organizations, be formed as a group for  
6 the purpose of advising us on the full spectrum of 1933.

7 And I think that covers it.

8 SENATOR PETRIS: One question on procurement.

9 A long, long time ago, I carried a bill that gave a  
10 5 percent edge in bidding on state contracts to small  
11 business with respect to the larger companies and out-of-  
12 state companies. I don't know if the out-of-state part is  
13 constitutional, but I hope it's survived.

14 Is that still in effect?

15 MR. LOCKWOOD: It is.

16 SENATOR PETRIS: Is it working well?

17 MR. LOCKWOOD: Small and minority businesses,  
18 that's one that I haven't had any complaints so, so I presume  
19 it must be working fairly well, although because I haven't  
20 had complaints, I haven't spent all that much time on that  
21 particular issue.

22 SENATOR PETRIS: Now, on one parochial matter, the  
23 State Building in Oakland was clobbered by the earthquake and  
24 condemned. It can't be used.

25 Do you happen to know what the plans are for that  
26 building?

27 MR. LOCKWOOD: Yes.  
28





1           SENATOR PETRIS: Will it be torn down?

2           MR. LOCKWOOD: No, the studies -- the question,  
3 that was the question, as to whether it -- and another one in  
4 San Francisco in a similar situation as to whether it would  
5 have to be torn down and replaced.

6           The Oakland one would have to be replaced. San  
7 Francisco, we think we can rebuild.

8           SENATOR PETRIS: That means it'll have to be torn  
9 down and rebuilt.

10          MR. LOCKWOOD: Yes.

11          Now, the question then is, do you rebuild on that  
12 site, or do you rebuild in the general vicinity but on  
13 another site? And that has not been determined yet. But the  
14 building can't be salvaged.

15          It's a sheer wall on the other side is just  
16 completely --

17          SENATOR PETRIS: Pretty bad, yeah. Well, we had to  
18 leave, of course, evacuate the whole thing, and we've moved  
19 twice since then. I'd like to get back into a state building  
20 instead of jumping around town.

21          Anyway, that's something else. Thank you very  
22 much.

23          MR. LOCKWOOD: Thank you, sir.

24          CHAIRMAN ROBERTI: Any further questions?

25          SENATOR MELLO: Can I ask one further question, and  
26 I promise you I will not ask any more.

27          This has to do with a far different matter. It's  
28



1 dolphin-safe tuna. It has come to my attention that the  
2 State of California is the largest purchaser of non-dolphin-  
3 safe tuna, due to your responsibility for purchasing on state  
4 contract, at a time when the federal government has joined  
5 with other nations to outlaw these high sea drift nets that  
6 trap tuna and also the pursings that trap tuna that are under  
7 dolphins. Therefore, thousands and thousands of dolphins  
8 have been taken.

9 Can you justify continuing to purchase this  
10 non-dolphin-safe tuna at a time when the federal government  
11 and, I think, the State of California, is moving to a point o  
12 banning the sale of non-dolphin-safe tuna in California?

13 MR. LOCKWOOD: Senator, until this very moment, I  
14 hadn't even thought about the General Services role.

15 I'm very familiar, because of San Diego, with the  
16 tuna controversy, but I've never thought about it in terms of  
17 our procurement practices.

18 In all candor, I think the answer is, whatever the  
19 -- you know, if you bid a commodity that, with the  
20 legislation of California, is a legal commodity, I presume  
21 we'd buy it. And if the legislation said that we shouldn't;  
22 we wouldn't. But I just don't know.

23 SENATOR MELLO: I appreciate your honesty.

24 At one time we had problems trying to sell -- your  
25 agency, again, before your time -- California apples at a  
26 time we had a glut of apples here. They were writing the  
27 specs so that Oregon and Washington had a more favorable  
28



1 bidding process than we did in the state.

2 I guess I'm always being accused of taking care of  
3 California and my own district, amongst other parts, but if I  
4 don't do it, who else is going to do it?

5 MR. LOCKWOOD: That was a new one.

6 SENATOR MELLO: Thank you.

7 MR. LOCKWOOD: Thank you.

8 CHAIRMAN ROBERTI: Any other questions?

9 SENATOR CRAVEN: Move Mr. Lockwood.

10 CHAIRMAN ROBERTI: I didn't know we were going to  
11 end these confirmation on the tuna, but it's always  
12 interesting.

13 Senator Craven moves confirmation be recommended to  
14 the Floor.

15 Secretary will call the roll.

16 SECRETARY WEBB: Senator Beverly.

17 SENATOR BEVERLY: Aye.

18 SECRETARY WEBB: Senator Mello. Senator Petris.

19 SENATOR PETRIS: Aye.

20 SECRETARY WEBB: Senator Craven.

21 SENATOR CRAVEN: Aye.

22 SECRETARY WEBB: Senator Roberti.

23 CHAIRMAN ROBERTI: Aye.

24 The vote is four to zero; confirmation's  
25 recommended to the Floor.

26 Congratulations.

27 MR. LOCKWOOD: Thank you, gentlemen.  
28





1 [Thereupon this portion of the  
2 Senate Rules Committee hearing  
3 was terminated at approximately  
4 4:10 P.M.]

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## DEPARTMENT OF GENERAL SERVICES

EXECUTIVE OFFICE

1325 J STREET, SUITE 1910

SACRAMENTO, CA 95814

(916) 445-3441



FEB 14 1992

February 14, 1992

The Honorable David Roberti  
President pro Tempore  
Senate Rules Committee  
State Capitol, Room 400  
Sacramento, CA 95814

Attention: Nancy Michel, Appointments Consultant  
to the Senate Rules Committee

Dear Senator Roberti:

During my Senate Confirmation Hearing I was asked to provide responses to three concerns raised by individuals who testified at my hearing. Those concerns and my responses are:

1. That the Department of General Services commit to "full certification" rather than "self certification" of minority, women, disabled veterans enterprises.

**RESPONSE:** I am a proponent of "full certification", however, the authority to initiate a "full certification" process rests with the Legislature and the staffing authority for such a program must be approved by the Legislature and the Administration. As I indicated in my testimony, such authority has been requested.

2. That the Department of General Services form an advisory group to provide input to the Department regarding women and minority business enterprise issues and that participation in that group include representatives from specifically listed organizations.

**RESPONSE:** An advisory group will be formed that will include representation from the suggested groups and in addition representatives from other women and minority organizations. Invitations to those organizations will be mailed next week and the initial meeting will be held within 90 days.

3. That the emergency regulation governing the ongoing administration of the Minority Business Enterprise, Women Business Enterprise, and Disabled Veterans Business Enterprise programs be held until discussions can be scheduled with individuals who have expressed reservation regarding the proposed wording.

**RESPONSE:** Discussions are taking place with interested individuals in an effort to satisfy their concerns and those discussions will be concluded prior to March 1, 1991.

Sincerely,

A handwritten signature in dark ink, appearing to read 'John Lockwood'.

JOHN LOCKWOOD, Director  
Department of General Services

JL:pts



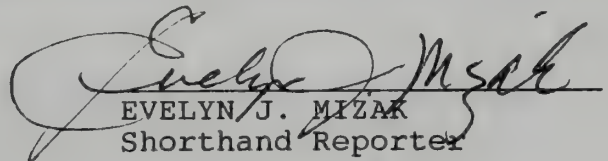
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 20<sup>th</sup> day of February, 1992.

  
EVELYN J. MIZAK  
Shorthand Reporter





**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
OFFICE OF THE DIRECTOR**

1800 THIRD STREET, Suite 450  
P.O. BOX 952051  
SACRAMENTO, CA 94252-2051  
(916) 445-4775 FAX (916) 323-2815



FEB 19 1992

February 13, 1992

Honorable David Roberti  
Chairman, Senate Rules Committee  
State Capitol, Room 400  
Sacramento, CA 95814

Dear Mr. Chairman:

Thank you and the members of the Senate Rules Committee for providing me the opportunity to present my qualifications to serve as Director of the Department of Housing and Community Development (HCD), and to convey to you and to the public my goals to expand affordable housing opportunities for Californians. Indeed, I want to thank you and the other members of the Committee for a favorable recommendation on my confirmation as HCD Director.

At the close of Tuesday's hearing Mr. Arnold Torres raised three issues in which HCD is involved and sought the Committee's support for obtaining a formal response from me to those issues. Specifically, Mr. Torres requested that I inform the Committee of HCD's position on reducing service delivery problems in the California Natural Disaster Assistance Program (CALDAP); dealing with local ordinances regarding housing occupancy; and the housing needs of California farm workers and their families. I would like to provide the you and members of the Rules with the following response to those issues.

**California Natural Disaster Assistance Program (CALDAP)**

The Department shares the Committee's concern about extended processing times for CALDAP assistance to victims of the Loma Prieta earthquake. As I indicated in my testimony, the processing procedures established for the program are cumbersome, confusing and time-consuming.

As you know, CALDAP provides "last resort" assistance to victims of natural disasters. The assistance is activated upon an emergency declaration by the Governor. However, for disasters such as the Loma Prieta earthquake and the Oakland Hills wildfire, federal declarations were made, activating relief assistance from the Federal Emergency Management Agency (FEMA) and the Small Business Administration (SBA). In these



instances involving a federal emergency declaration, CALDAP is available only after FEMA and SBA assistance is determined to be insufficient or unavailable. Because of this relationship with the federal assistance programs, CALDAP must follow federal disaster relief procedures and thereby "takes in" CALDAP applications after the FEMA and SBA procedures have been completed. Consequently, timely CALDAP processing is subject to federal schedules and performance.

In addition to its relationship with the federal government, CALDAP procedures, in both the Loma Prieta and Sierra Madre earthquakes, involve delegating processing activities to local governments. This situation, again, makes CALDAP processing beholden to the efficiencies of other public agencies. While community-based responses (to emergencies) may be desirable, the processing and underwriting of the CALDAP loans is extremely labor-intensive and impacts disaster-stricken communities at a time when they may be least able to perform additional relief functions.

Accordingly, in its response to the Oakland Hills wildfire, HCD decided to take exclusive responsibility for receiving and processing CALDAP loan applications. We believe this approach, modeled after the successful SBA program, can expedite processing and improve overall service. Unfortunately, due to a FEMA regulation requiring the settlement of insurance claims before federal relief can be provided, HCD has been unable to begin processing the three dozen applications for CALDAP it has received as of this date. However, when processing commences, HCD will monitor the efficiency of this approach to determine whether it is superior to past procedures.

Senator Petris has also offered another alternative which HCD is reviewing and believes may have merit. The proposal calls for allocating, in block grant fashion, the CALDAP funding to the disaster-impacted community and delegating to that community all of the processing requirements, including loan approval or rejection. (NOTE: As this letter is being written HCD is considering whether to experiment with this approach as it composes its relief plan for assisting victims of flooding in Southern California.) HCD will advise Senator Petris, the Committee and other appropriate committees of the Legislature as to the viability of this approach.

In addition, HCD plans to continue a series of technical assistance meetings, including site visits, with those local agencies currently handling applications submitted by victims of the Loma Prieta Disaster. We have already committed \$127 million of the total \$184.5 million appropriated or currently proposed for the Loma Prieta disaster. However, because of the "last resort" nature of the program described above, and the overall volume of applications, more than 1,100 of the remaining 1,494 Loma Prieta applicants are still being processed at the local level. Our assistance should help local agencies expedite these applications, and avoid delays once applications reach HCD.

Finally, HCD is proposing legislation to reform existing CALDAP processing and eligibility guidelines. Among those reforms are the establishment of specific application deadlines and a maximum loan limit. We look forward to working with members of the Committee and others in gaining support for the adoption of these changes.





## **Occupancy Limits**

Mr. Chairman, during the hearing you asked for my reaction to a recently passed occupancy ordinance in the City of Santa Ana which could have the effect of displacing families from their homes. You specifically asked me if HCD would serve as an amicus curiae in an appeal of a Superior Court ruling upholding the ordinance. The request for an amicus brief was made by the Hermandad Mexicana Nacional Legal Center and would be filed with the Fourth Appellate District Court. Mr. Torres also raised this issue during his testimony and suggested that an ad hoc council be formed to address the issues raised by such local ordinances.

In my response to your question, I indicated that HCD is investigating the possibility of serving as amicus curiae in this appeal and it would be premature and unwise for me to speculate on the outcome of that investigation. Correspondingly, it would be equally inappropriate for me, at this time, to judge the efficacy of an ad hoc council to address this issue.

However, as I also stated in my testimony, I see no reason for the existing Uniform Housing Code occupancy standard to be superseded by a more stringent one, such as that which was adopted in Santa Ana. Variances to this nationally accepted standard for existing housing can be justified only in instances where, as the California Health and Safety Code provides, they "are reasonably necessary because of local climatic, geological, or topographical conditions." I am unaware that this test has been met in Santa Ana.

I am also concerned about how this local action may affect extended families living in single homes. So long as a "health and safety" standard is being upheld, it is difficult to imagine how an ordinance such as Santa Ana's can avoid being arbitrary and indiscriminate.

Finally, as I said to the Committee, it is unlikely that the displacement of individuals and families which this ordinance is certain to produce will serve Santa Ana and surrounding communities well. The efforts a city should first take to deal with overcrowding is to expand housing supply, not precipitate displacement. I should think some of those communities were alarmed to read in a local newspaper that an official of the City of Santa Ana predicted that as a result of the ordinance being enacted "most of those evicted from crowded homes will cross the city line to Garden Grove, Anaheim, Orange or Tustin [where] crowding one or two homes on a block instead of five or 10 [will] cause fewer problems."

Mr. Chairman, I will keep the Committee apprised of HCD's involvement in this matter.

## **Farm Worker Housing**

The Department of Housing and Community Development has three programs principally designed to assist in providing adequate shelter for farm workers. The Office of





Migrant Services (OMS) and the Farmworker Housing Program are the two funding programs providing temporary and permanent housing, respectively. HCD has indicated its support for funding farm worker housing as part of the omnibus housing bond bill, SB 593. HCD also believes that targeting general housing assistance to underserved areas where farm workers predominate will serve as an effective companion state funding strategy. As the Legislature prepares to take up the housing bond bill and considers all of the competing priorities, HCD urges that the highest possible funding level be provided for farm worker housing.

In addition to seeking more funding for farm worker housing, HCD undertook several efforts to augment and improve the existing programs. Although \$10 million was authorized in 1990 for OMS, previous efforts to solicit applications were unsuccessful. In 1991, HCD removed a requirement for matching funds and actively solicited new applications. As a result of these efforts, HCD recently announced OMS awards for the \$10 million. Also in support of the OMS program, HCD gained the approval of the U.S. Department of Housing and Urban Development (HUD) to use approximately \$2 million in surplus Community Development Block Grant (CDBG) funds to rehabilitate existing OMS facilities in need of extensive repair.

In the last month, HCD also helped in the development of an innovative program in Livingston, CA which uses manufactured housing to produce a multifamily farm worker community. HCD believes this program can become a model for farm worker housing throughout the state. It appears that legislation is necessary for the development of a larger prototype and HCD is working with the California Manufactured Housing Institute to co-sponsor an appropriate bill.

The third farm worker housing program at HCD is a law enforcement and not a housing development program. Through the Employee Housing Act (the Act), HCD is responsible for ensuring that housing for farm workers provided by farmers and growers meets basic health and safety standards. HCD's enforcement responsibilities include registering "labor camps" where five or more farm worker households exist, inspecting camps and issuing citations for code violations and imposing fines for failure to make needed repairs.

Past efforts of the state to enforce the Employee Housing Act have been unsatisfactory. Moreover, the penalties to farmers for non-compliance were inadequate to deter abuse. In the last year, however, HCD has stepped up enforcement through actions which include the following:

- Last year HCD began a comprehensive public information campaign aimed at exposing substandard and illegal housing conditions in labor camps around that state. HCD distributed thousands of bilingual posters and brochures to local governments, public health clinics, local district attorneys, farm bureaus and organizations serving farm workers to increase awareness of the protection provided by the Act as well as the newly enacted penalties for violations.



- As a part of the information campaign, HCD established a 24-hour, toll-free telephone hotline, staffed by bilingual personnel during business hours to receive complaints, learn of violations and provide information about the Act.
- HCD has made a specific effort to help support local law enforcement capability by directly appealing to local district attorneys. Many already have very active programs for enforcing the Act and aggressively prosecuting offenders. HCD is attempting to draw from those successful programs the models, tactics and other enforcement information to develop its own technical training program for district attorneys in other jurisdictions. HCD believes that informed and involved local district attorneys are critical to an effective statewide enforcement program.
- The Department sponsored a bill and supported additional legislation to strengthen enforcement of the Act. The three bills, authored and aggressively pursued by Assemblyman Richard Polanco, gave the Department the authority for the first time to directly impose fines on labor camp operators found in violation of the Act. The legislation, signed by Governor Wilson in October of last year, became effective January 1, 1992.

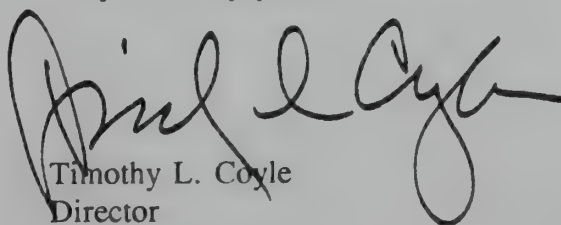
Mr. Chairman, even with increased penalties, expanded communication and informational networks, and other stepped up enforcement efforts, the challenge of adequately ensuring safe and healthful housing for farm workers remains daunting. While we are optimistic about the deterrent impact of the new sanctions, as well as the increased publicity of both abhorrent living conditions and swift prosecutions, we cannot afford to be sanguine. And in an environment of declining state revenues and economic constraints, we must also be realistic.

In this area of farm worker housing, and particularly health and safety protection, I believe we have to explore new, creative solutions. Those solutions demand cooperation and active participation of all parties. Considering that farm workers represent a vital component of California's economic competitiveness -- as do all productive Californians -- it should be axiomatic that providing an adequate supply of safe, healthful and affordable housing is a mutual goal of everyone.

Again, thank you for attention and courtesy during my confirmation testimony. I hope the foregoing response to several matters raised during the hearing is adequate. I am pleased to provide any additional information, if necessary or appropriate.

Similar letters were sent to Senators Beverly, Craven, Mello and Petris.

Very sincerely yours,



Timothy L. Coyle  
Director







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